

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

228

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,730

GILBERT PATTERSON, SR. as Administrator of the
Estate of Keith W. Patterson,

Appellant,

v.

GEORGE C. WHITE and ELIZABETH C. WHITE,
His Wife, and THE BRANCH AVENUE
FULL GOSPEL CHURCH,

Appellees,

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 1 1970

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Appellees.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLANT

ISSUE PRESENTED

1. Whether the filing of an amended complaint which merely substituted the name of a corporate defendant and its registered agent for the trustees of the corporate defendant relates back to the filing of the original complaint.

This case has not previously been before this court.

REFERENCE TO RULINGS

Opinion and Order granting summary Judgment dated August 31, 1970, Barrington D. Parker, United States District Judge.

JURISDICTIONAL STATEMENT

The Jurisdiction of this Honorable Court is invoked by virtue of 28 U.S.C. 2106 (1964) pursuant to its authority to affirm, modify, vacate, set aside or reverse any judgment, decree or order of Court lawfully brought before it for review and may reverse the cause and direct the entry of such appropriate judgment, decree or order or require such further proceedings to be had as may be just under the circumstances.

STATEMENT OF THE CASE

The Appellant, as administrator of the Estate of Keith W. Patterson, filed an action on May 14, 1969, against George C. White and Elizabeth R. White, as owners of a dog who was involved in the death of his son, the decedent, and against Robert Randolfi, Felix Rizzo and Domenico Tropea, as trustees of the Branch Avenue Full Gospel, as owners of the property which the action alleged was carelessly, negligently and recklessly maintained so that the decedent fell into a 15 foot deep window well on January 18, 1969. The dog's owners were served and filed an answer. The plaintiff made several efforts to get service of process on the other defendant, trustees of the Church, from May 14, 1969, to September 9, 1969. On March 2, 1970, the plaintiff made a motion to extend Rule 13 and to amend the complaint. Both motions were granted the same day and the amended complaint was filed March 5, 1970.

The amended complaint deleted the names of the defendant trustees and substituted therefor the corporate defendant with Domenico Tropea named as registered agent.

The defendant Church was served on March 19, 1970, through its agent Tropea. Defendant Church filed a Motion for Summary Judgment on the ground that action was not brought within the one year statute of limitations for wrongful death as to it. This motion was granted.

The plaintiff filed timely notice of appeal.

STATEMENT OF FACTS

The Appellant is the father of Keith W. Patterson who died on January 18, 1969, as the result of falling into a window well on property owned by the Branch Avenue Full Gospel Church after being chased by a dog. The Appellant filed an action as Administrator of the Estate of Keith W. Patterson, deceased, against the owners of the dog, George C. White and Elizabeth R. White, and against Robert Randolfi, Felix Rizzo and Domenico Tropea as trustees of the Full Gospel Church, alleging carelessness and negligence on the part of the defendants in the death of his son.

The action was filed May 14, 1969. The Whites were served and filed an answer. The Appellant made several efforts to serve the other defendants, trustees of the Branch Avenue Full Gospel Church, from May 14, 1969. On March 2, 1970, the Appellant made a motion to extend Rule 13 of the Local Civil Rules and to amend the complaint. Both motions were granted the same day and the amended complaint was filed March 5, 1970.

The amended complaint substituted Branch Avenue Full Gospel Church as defendant for its trustees and named Domenico Tropea as its registered agent.

The defendant Church was served on March 19, 1970, through its registered agent, Tropea. It filed a motion for summary judgment on the ground that action was not brought within the one year sta-

tute of limitations for wrongful death as to it. After answer to the motion was filed and argument heard, the motion was granted.

The plaintiff filed timely notice of appeal.

SUMMARY OF ARGUMENT

The lower court erred in dismissing the action by granting the motion for summary judgment since the individual originally named were really sued as agents of the Branch Avenue Full Gospel Church.

ARGUMENT

It is to be noted that the Appellant sued Randolfi, Rizzo and Tropea as *Trustees* of the Branch Avenue Gospel Church, not individually. The man who is the registered agent of the Church is named a defendant in the original complaint. It is pure sophistry to say that he did not sue the Church in the original complaint. The filing of the amendment was a technical correction by naming the Church formally. The law looks through form to substance.

Rule 15 (c) of the Federal Rules of Civil Procedure reads:

Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The case of *Gifford v. Wichita Falls & Southern Railway Co.*, 224 F.2d 374 (1955) is similar. There the plaintiff sued Wichita Falls and Southern Railway Company. Some years prior to the suit the Wichita Falls and Southern Railroad Company acquired all the assets of the Wichita Falls and Southern Railway Company and that the Railroad Company was, in fact, the owner and operator of the railroad property and plaintiff was, in fact, an employee of said company. The two corporations were interrelated; occupied offices together and only employees of the Railroad Company performed services for the Railroad Company. The defendant filed a motion to dismiss or, in the alternative, for summary judgment. The plaintiff filed a motion to amend a misnomer in that it wanted to change the name of the defendant from railway to railroad. This motion was denied and the case was dismissed. In reversing, the Fifth Circuit Court of Appeals held that Rule 15, FRCP, governed. It quoted with approval, Professor Moore, author of Moore's Federal Rules:

"The test should be whether, on the basis of an objective standard, it is reasonable to conclude that the plaintiff had in mind a particular entity or person, merely made a mistake as to the name, and actually served the entity or person intended; or whether plaintiff actually meant to serve and sue a different person."

There is no doubt that the second criterion of Rule 15 is met. The deposition of Domenico Tropea shows that the Church knew of the death of Keith W. Patterson and discussed it in the Board meeting (pp. 7, 8, 9, 10, 11) at the time it happened. This is similar to *Meredith v. United Air Lines*, 41 F.R.C. 34 (S.D. Cal, 1966) where the court held that an amended complaint adding the Lockheed Aircraft Company, an altogether new party to the action related back to the original action filed. The Court held that, since

Lockheed knew of the original action, the doctrine of relation back enunciated in Rule 15 applied. In the instant case the Appellant had actually sued the Church through its agents. This does not add a party.

This Court has recently said in *Bibeau v. Northeast Airlines*, U.S. App. D.C. No. 23,303, July 10, 1970 in another wrongful death case that the interests of justice required the reinstatement of a case dismissed for want of prosecution. It pointed out that the appellee could show no prejudice. The Appellee herein can show and made no attempt to show prejudice.

CONCLUSION

Based upon the foregoing argument and authorities cited, the conclusion is inescapable that the trial court should have denied the motion for summary judgment and allowed the cause to proceed to trial.

Accordingly, the Appellant prays this Honorable Court to reverse the Order entered by the trial court.

Respectfully submitted,

Bruce R. Harrison

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336-3900

Attorney for Appellant

(i)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GILBERT PATTERSON, SR.
as Administrator to the
Estate of KEITH W. PATTERSON,
Deceased

Plaintiff

vs.

Civil Action No. 1258-69

GEORGE C. WHITE and
ELIZABETH R. WHITE, His Wife, and
THE BRANCH AVENUE FULL GOSPEL CHURCH

Defendants

COMPLAINT FOR WRONGFUL DEATH

1. Jurisdiction of the United States District Court for the District of Columbia is invoked pursuant to Title 11, sec. 521 District of Columbia Code, 1967 Edition and the amount in controversy exceeds \$10,000.00.

2. Now comes Plaintiff, GILBERT PATTERSON, SR., as administrator to the Estate of his deceased infant son, KEITH W. PATTERSON by and through his attorney Bruce R. Harrison and sued defendants GEORGE WHITE and ELIZABETH R. WHITE, his wife and defendants ROBERT ANGOLFI, FELIX ALVAREZ and LUIS MIGUEL TORRES as trustees of THE BRANCH AVENUE FULL GOSPEL CHURCH for that on or about January 18, 1969 plaintiff-administrator's deceased infant son was proceeding on foot on Nash Place, S.E., a public street in the southeast section of the District of Columbia.

3. That defendants GEORGE WHITE and ELIZABETH R. WHITE, his wife, sole owners of certain dogs with vicious and violent propensities, knew of and were under a duty to know of said dog's vicious and violent propensities and notwithstanding suffered the public and plaintiff-administrator's deceased infant son in particular to the said dogs by carelessly and recklessly allowing them to freely roam the public streets,

4. That defendants ROBERT RANDOLFI, FELIX PILO and DOMENICO TROPEA as trustees of THE BRANCH AVENUE FULL GOSPEL CHURCH in the maintenance of said Church, carelessly, recklessly and negligently maintained and approximately fifteen (15) foot deep window-well without adequate protection.

5. At which time and place under the circumstances as alleged in paragraphs 2, 3 and 4 hereof the aforesaid dogs with the aforesaid vicious and violent propensities, belonging to defendants WHITE, pursued the deceased infant unto the aforesaid unprotected and negligently maintained window-well owned by defendant Church, thereby causing him to fall approximately fifteen (15) feet to his death.

WHEREFORE the above premises considered plaintiff-administrator claims judgments against each defendant both jointly and severally the amount Fifty Thousand (\$50,000.00) dollars plus cost.

BRUCE N. HARRIS
Attorney for Plaintiff-administrator
631½ George Calmer Highway
Seat Pleasant, Maryland 20027
Phone: 336-3900

[Caption Omitted in Printing]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, THE BRANCH AVENUE FULL GOSPEL CHURCH, a corporation, through its counsel, Caliber, Stewart & Clarke, and moves this Court to grant summary judgment in its favor, and as reason therefor avers that the claim as set forth in the amended complaint filed herein is barred by the appropriate statute of limitations for the District of Columbia.

The attention of the Court is respectfully directed to the Affidavit of Paul Chiaro, secretary of the defendant corporation, and the Points

and Authorities in support of this Motion, which are attached hereto and
prayed to be read as a part hereof.

CALIHER, STEWART & CLARKE

By _____

Frank J. Martell
Attorneys for Defendant, The Branch
Avenue Full Gospel Church
1215 - 19th Street, N. W.
Washington, D. C. 20036

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Rule 17 F.R.C.P., states thusly:

"(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitute of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest. As amended Feb. 28, 1966, eff. July 1, 1966.^{1.1}

"(b) Capacity to Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized....

Rule 4 "(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows....

Rule 4 "(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

Title 29-1011 provides:

"Registered agent as an agent for service.
(a) The registered agent appointed by a corporation as provided in this chapter shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent."

It is undisputed that the parties relating to the corporate defendant named in the original complaint were in fact trustees of the defendant church.

It is equally undisputed that the amendment was in fact a substitution of parties, whereby the nominal parties, i.e., the trustees, were deleted and the defendant corporation was substituted.

Substitution of the defendant church in lieu of its trustees did not change the cause of action in the slightest degree; it did not introduce into the complaint a new or different cause of action. The cause of action is precisely the same and the same relief is sought against the defendant.

See Rule 15(c) F.R.C.P. which states:

"Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, the amended relates back to the original pleading."

In the instant case, the trustees of the church defendant were merely nominal parties and as such did not deprive plaintiff the right to substitute the church pursuant to the Federal Rules of Civil Procedure, supra and the applicable local statute defining rights and liabilities of domestic corporations. Link Aviation, Inc. v. Downs, 325 F2d 613 (1963)

Respectfully Submitted,

Bruce R. Harrison
Attorney for Plaintiff
336-3900

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MEMORANDUM AND ORDER

Plaintiff is the acting and qualified administrator of his minor son's estate. On January 18, 1969, the son fell to his death into a fifteen-foot-deep window-well on the property of the defendant The Branch Avenue Full Gospel Church while fleeing from some allegedly vicious dogs. Plaintiff filed a complaint for wrongful death on May 14, 1969,^{1/} against the owners of the animals and against Messrs. Robert Pandolfi, Felix Rizzo, and Domenico Tropea, trustees of the Church. The dogs' owners were served and have filed an answer. Unsuccessful endeavors were made to secure service of process on the trustees on several occasions between May 14 and September 9, 1969. Thereafter, plaintiff took no action in the case until March 2, 1970, when motions were made

1/ Pursuant to the Wrongful Death Act, D.C. Code § 16-2701 et seq. (1967 Ed.).

to extend Local Rule 13^{2/} and to amend the complaint. Both motions were granted on the same day and the amended complaint filed on March 5, 1970. The amended complaint deleted the defendant trustees and substituted therefor the corporation The Branch Avenue Full Gospel Church, whose registered agent was Domenico Tropea, one of the trustees.

The defendant Church was served on March 19, 1970, through its agent Tropea. Defendant Church then responded with the Motion for Summary Judgment which is the subject of this opinion. For the reasons indicated herein, the relief sought by the defendant should be granted.

The defendant Church argues that the statute of limitations for an action in wrongful death is one year and that it was not served within a year of the date of the decedent's death.^{3/} Plaintiff points to Rule 15(c) of the Federal Rules of Civil Procedure.^{4/} Defendant replies that since neither it nor

^{2/} "Dismissal for Failure to Prosecute," Rule 13 of the United States District Court Rules for the District of Columbia. Had plaintiff not so moved, his case would have been subject to dismissal for failure to take any action within a six-month period.

^{3/} D. C. Code § 16-2702.

^{4/} Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the

its trustees were ever served, no notice reached it, and therefore Rule 15(c) is of no assistance to plaintiff. As support defendant cites Harris v. Stone, 115 F. Supp. 531 (D.C.D.C. 1953). There the defendant's name appeared incorrectly in the original complaint (Augustus Stone, instead of J. Austin Stone). Service was attempted at defendant's home but refused under the erroneous name. After the statute of limitations had run, plaintiff attempted to amend the complaint to reflect defendant's correct name contending that the action related back to the filing of the first complaint. Amendment of the complaint was denied, the Court feeling that in the absence of service, no facts had been presented which would suggest any reason why the statute of limitations had not run. The case seems harsh.

Perhaps today a similar fact pattern would produce a different result, in the light of the 1966 amendment to the Rule,^{5/} which clarified that "notice" is to be liberally construed.

The liberal construction is illustrated by cases such as Meredith v. United Air Lines, 41 F.R.D. 34 (S. D. Cal. 1966). There, after the statutory time had elapsed plaintiff discovered that a third party, Lockheed Aircraft Co., hitherto unknown to her, was probably responsible for some portion of her injuries.

action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

^{5/} The second sentence in footnote 4, supra, is a part of the 1966 amendment.

An amended complaint was filed adding Lockheed as an additional defendant and the Court ruled that the complaint related back in time to the filing of the first complaint. While Lockheed had never been served or contacted in any way by the plaintiff, the Court found that they were aware of the plaintiff's injuries because they had participated in a hearing held by the Civil Aeronautics Board on the incident which caused them and had reason to anticipate involvement in her action.

Applying these principles to the instant case, the Court informed the parties at a hearing on the motion that the failure to serve the defendant trustees was not of itself dispositive of the motion before it. Plaintiff was requested to determine whether the Church or the trustees received notice by any other means, and whether the trustees and the Church knew or had reason to know of the action being brought against them. At a further hearing held some two months later, plaintiff was able to show that the trustees and the Church were aware of the occurrence of an accident involving the minor, but was unable to produce any evidence of their awareness or knowledge of the extent of the Church's alleged involvement, or the institution and existence of legal action prior to May 14, 1970. Absent such a showing, the Court must declare that the statute of limitations has run as to the defendant, and it is this 31st day of August, 1970,

ORDERED, that the Motion of defendant Branch Avenue Full Gospel Church for Summary Judgment, shall be and hereby is, granted.

August 31, 1970

BARRINGTON D. PARKER
UNITED STATES DISTRICT JUDGE

J U D G E

Copies to:

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Washington, D. C., 20036

Attorneys for Defendant, The Branch Avenue Full Gospel Church

[Caption Omitted in Printing]

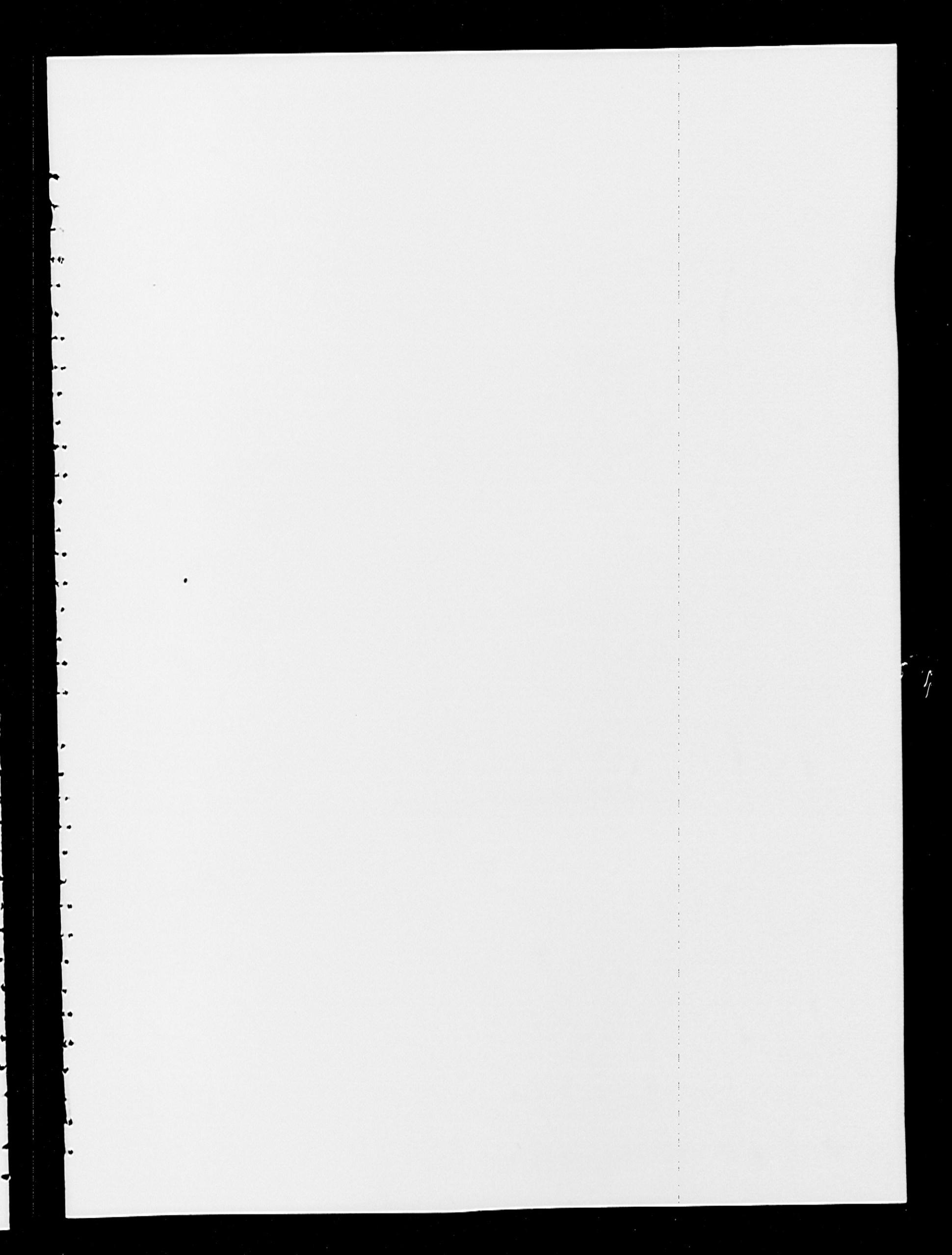
NOTICE OF APPEAL

Notice is hereby given that GILBERT PATTERSON, SR., Administrator to the Estate of KEITH PATTERSON, deceased, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit, from the decision of this Court entered in the above captioned proceeding on the 31st day of August, 1970.

George C. White, et ux
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,730
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*United States Court of Appeals
for the District of Columbia Circuit*

FILED JAN 21 1971

Martell, J. P. Patterson

GILBERT PATTERSON, SR., As Administrator of the
Estate of Keith W. Patterson,

Appellant,

v.

GEORGE C. WHITE and ELIZABETH C. WHITE, His Wife,
and THE BRANCH AVENUE FULL GOSPEL CHURCH,

Appellees.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE,
THE BRANCH AVENUE FULL GOSPEL CHURCH

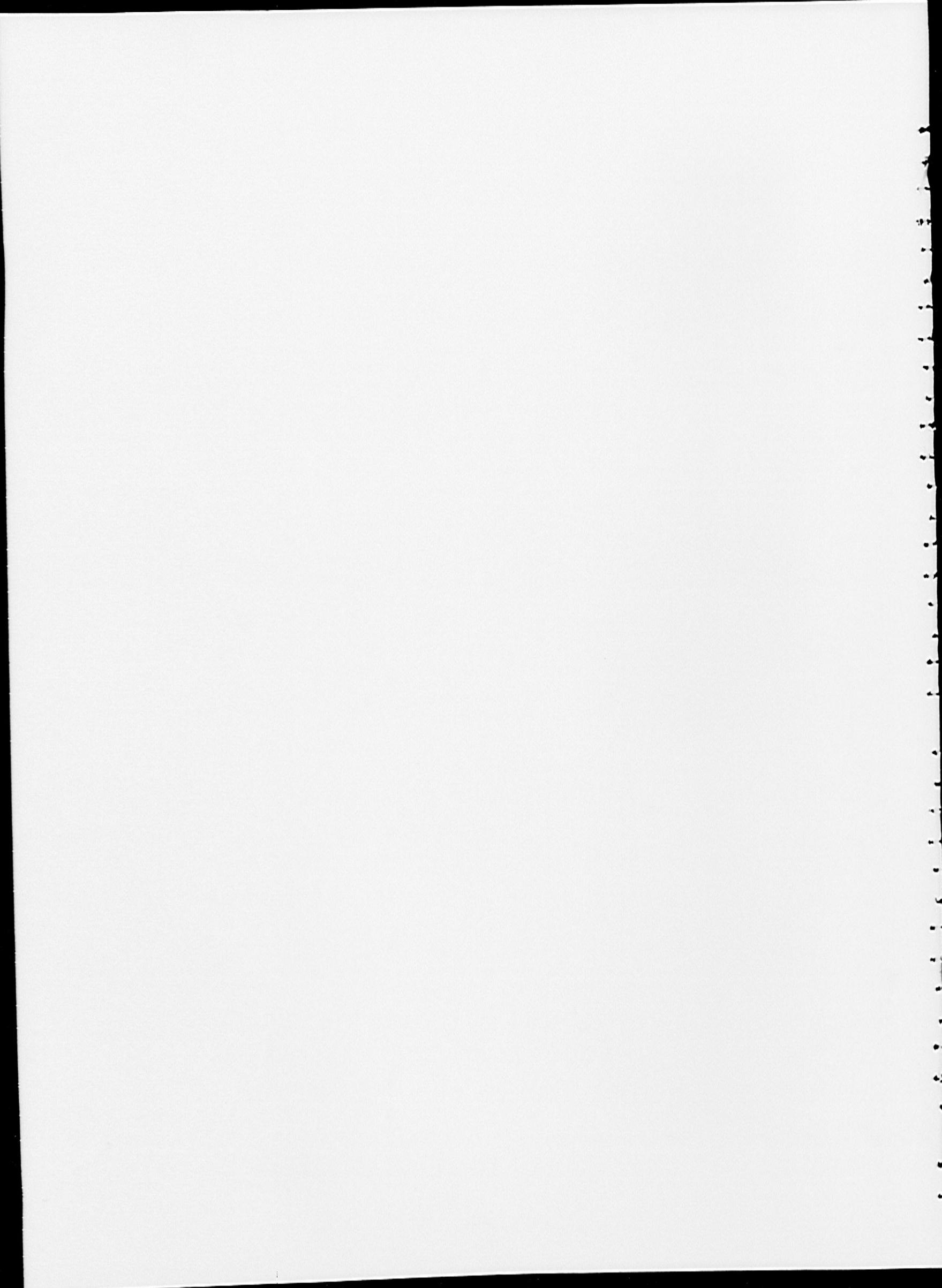
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IN THE
UNITED STATES COURT OF APPEALS
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No. 24,730

GILBERT PATTERSON, SR., as Administrator of the
Estate of Keith W. Patterson

Appellant

v.

GEORGE C. WHITE and ELIZABETH C. WHITE, His Wife,
and THE BRANCH AVENUE FULL GOSPEL CHURCH,

Appellees

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE,
THE BRANCH AVENUE FULL GOSPEL CHURCH

STATEMENT OF ISSUE PRESENTED

Was error committed by the trial court in granting the motion of defendant, The Branch Avenue Full Gospel Church, for summary judgment where the said Church had not been designated a party defendant nor served with process until after the expiration of the statute of limitations for wrongful death actions?

COUNTERSTATEMENT OF THE CASE

On May 14, 1969, plaintiff herein filed a complaint, claiming damages for the wrongful death of his son on January 18, 1969, when decedent allegedly fell to his death into a window well on property of the defendant, The Branch Avenue Full Gospel Church. The defendants named in the original complaint (R. 1) were the owners of the allegedly vicious dogs, George C. White and Elizabeth R. White, who were served with process and who have filed an answer; and Messrs. Pandolfi, Rizzo and Tropea, designated in the original complaint as trustees of The Branch Avenue Full Gospel Church, who allegedly, "in the maintenance of said Church, carelessly, recklessly and negligently maintained and [sic] approximately fifteen (15) foot deep window well without adequate protection." Summons and complaints were issued on several occasions between May 14, 1969, and September 9, 1969, but neither Pandolfi, Rizzo nor Tropea was ever served.

No further action was taken by plaintiff to prosecute this action until March 2, 1970, when a motion to amend the complaint and to extend Local Rule 13 was filed. This motion was granted that same day. The motion requested the court "to amend the within complaint by way of deleting the defendants Robert Pandolfi, Felix Rizzo and Domenico Tropea as Trustees of the Branch Avenue Full Gospel Church and in lieu thereof insert the name of Branch Avenue Full Gospel Church as defendant." As grounds for the granting of this portion of said motion, plaintiff recited:

"1. That as Domenico Tropea is the registered agent of the above corporation, it is superfluous to have the above names [sic] as defendants and unnecessary to attempt to secure judgments against them individually" (emphasis supplied).

The amended complaint, filed on March 5, 1970, after the expiration of the statute of limitations for wrongful death actions, added as a party defendant the corporation, The Branch Avenue Full Gospel Church, and dropped the trustees, Messrs. Pandolfi, Rizzo and Tropea, and was served on Domenico Tropea, registered agent for the corporate defendant, on March 19, 1970. Defendant Church filed its motion for summary judgment on the ground that the District of Columbia statute of limitations for wrongful death actions is one year, and that the defendant Church had neither been named as a defendant nor served within one year of the date of decedent's death. This motion was supported by the affidavit of Paul Chiaro, Secretary of the corporate defendant, setting forth the corporate ownership by the Church of the property where the tort allegedly occurred (R. 9).

In opposition thereto, plaintiff relied on the provisions of Rules 17 and 15(c) of the Federal Rules of Civil Procedure (App. 3-5).

Oral argument of the motion was first heard by the trial court on July 12, 1970, during which argument the court directed counsel's attention to the case of Meredith v. United Air Lines, et al., 41 F.R.D. 34 (S.D. Cal., 1966), which was termed by the court, the "liberal" construction of Rule 15(c) (the relation back of amendments). The court then ordered argument on defendant's motion continued until August 21, 1970, and that plaintiff, to avoid the bar of the statute of limitations in his action against the Church, could endeavor to bring his case within the protection of the

interpretation of the Meredith case by granting additional discovery to plaintiff in an effort to show (1) whether defendant, The Branch Avenue Full Gospel Church, had actual notice of the pendency of the claim asserted in this civil action, (2) whether defendant, The Branch Avenue Full Gospel Church, had actual notice of the incident itself, and (3) whether defendant, The Branch Avenue Full Gospel Church, had actual notice of the factual situation which gave rise to the claim asserted in this civil action (R. 12).

In an effort to comply with the above order, plaintiff deposed defendant's registered agent, Domenico Tropea, on August 18, 1970 (R. 16).

The argument on defendant's motion for summary judgment was concluded on August 21, 1970, after which the matter was taken under advisement and subsequently decided in favor of defendant on August 31, 1970, in a succinct and enlightening memorandum opinion (App. 5-9).

ARGUMENT

Rule 15(c), F.R.C.P., upon which plaintiff now apparently relies to relieve him of the running of the statute of limitations, is of no aid in this instance. The attention of the Court is respectfully directed to the case of Kerner v. Rackmill, 111 F. Supp. 150 (D.C. M.D. Pa., 1953), where a complaint and process in an action against "Lloyd Rackmill, individually and doing business under the firm name and style of Malibu Dude Ranch," was held not to be capable of amendment to bring in Malibu Dude Ranch, Inc., as a defendant after the statute had run. The Court stated that if the effect of an amendment is merely to correct the name of a party already in court,

there is no prejudice in allowing the amendment, even though it relates back to the date of the original complaint; but if the effect is to substitute a new defendant or add another party, such amendment amounts to a new cause of action and cannot be permitted when the statute of limitations has run. In this case, it appears that Rackmill may have been competent to receive service on behalf of the corporation, but the Court further held that this was immaterial.

In the case of United States for Use and Benefit of Statham Instruments, Inc. v. Western Casualty and Surety Company, 10 F.R.S. 2d 15c.l, Case 1, 359 F. 2d 521 (C.A. 6th, 1966), it was held that, as a general rule, an amendment pursuant to Rule 15 relates back only as to the matters relating to the original parties of the complaint, or to correct a misnomer or a misdescription of the defendant, and not to add or substitute a new party defendant. In this case, an action under the Miller Act was timely commenced against the contractor and the wrong surety. The amendment was filed after the expiration of the one-year limitation, attempting to add the proper surety as a defendant. The Court held that this did not relate back to the date of the original pleading so as to remove the statute of limitations bar with respect to the surety.

Again, in Cone v. Shunka, 10 F.R.S. 2d 15c.l, Case 3, 40 F.R.D. 12 (D.C. W.D. Wis., 1966), it was held that Rule 15(c) does not permit an amendment the effect of which is to allow the bringing of an action against a new party in whose favor the limitations period has run. In this instance, an action for personal injuries, the amendment of the complaint naming the defendants' insurer as a party defendant after the applicable statute of limitations

had run was held not to relate back to the date of the original pleading. It was further held that the 1966 amendment to Rule 15(c) did not require a different holding on the facts of the case.

In another case upon which this defendant relies as being similar in fact and in law, the Court, in Martz v. Miller Bros. Co., 9 F.R.S. 2d 15c.1, Case 5, 244 F. Supp. 246 (D.C. D.Del., 1965), held that a plaintiff who filed a complaint against "Miller Brothers Company" would not be permitted to amend so as to substitute "Miller Brothers Company of Newark," a separate and distinct corporation, after the statute of limitations had expired. The Court further held there was no element of excusable neglect on the part of plaintiff's attorney which would permit an amendment of the complaint to relate back, nor could plaintiff be held to have been misled by acts of the defendant.

To the same effect are the decisions of the Courts in Jacobs v. McCloskey & Co., 10 F.R.S. 2d 15a.3, Case 1, 40 F.R.D. 486 (D.C. E.D. Pa., 1966); Nave v. Ryan, 10 F.R.S. 2d 15c.1, Case 8, 266 F. Supp. 405 (D.C. D.Conn., 1967); Graeff v. Borough of Rockledge, 8 F.R.S. 2d 15a.32, Case 1, 35 F.R.D. 178 (D.C. E.D. Pa., 1964); Evans v. United States Veterans Administration Hospital, 11 F.R.S. 2d 15c.22, Case 1, 391 F. 2d 261 (C.A. 2d, 1968); Burns v. Turner Const. Co., 11 F.R.S. 2d 15c.1, Case 1, 265 F. Supp. 768 (D.C. D.Mass., 1967); Monarch Industrial Corp. v. American Motorists Ins. Co., 12 F.R.S. 2d 14a.511, Case 1, 276 F. Supp. 972. In this latter case, a purchaser of goods allegedly damaged while in transit originally brought action against its insurer, and the insurer impleaded the carrier. The Court held that the original plaintiff would not be permitted to amend its complaint

after the statute of limitations had run to assert a claim directly against the carrier, the third-party defendant. This was true, the Court held, although the claim against the carrier arose out of the same transaction set forth in the original complaint. However, under Rule 15(c), the amendment would not relate back to the date of the original complaint since it was one "changing the party" against whom the claim was asserted.

In this jurisdiction, there have been very few decisions on this particular point. The case of Harris v. Strong, 115 F. Supp. 531, has never been overruled. In that case, where the defendant's name was incorrectly designated in the original complaint, service of process was attempted at the defendant's home, but refused under the erroneous name. After the running of the statute of limitations, a motion to amend the complaint was filed by plaintiff's counsel to reflect defendant's correct name, plaintiff arguing that the action related back to the filing of the first complaint. The court denied the requested amendment, feeling that, in the absence of service, no fact had been presented which would suggest why the statute of limitations had not run.

Following Harris, the same principle was involved in King v. Udall, 266 F. Supp. 747. When the matter originally came before the court on cross-motions for summary judgment, the hearing was continued to enable the plaintiffs to bring in as additional parties other grantees of various portions of oil tracts. An amended complaint was then filed by the plaintiffs, naming these additional defendants, who interposed the defense of the 90-day statute of limitations contained in 30 U.S.C., §226-2. The late Judge Holtzoff, in

ruling that the statute of limitations barred the bringing in of the additional defendants and granting their motions to dismiss, held:

"Rule 15 of the Federal Rules of Civil Procedure as recently amended, which deals with amendments of pleadings, does not aid the plaintiffs. Subsection (c) of the Rule concerns relation back of amendments. It is limited to amendments changing the party against whom a complaint was served. It does not apply to additional parties.

"It is a well established principle that ordinarily a new party brought in subsequently to the commencement of an action may interpose a defense of the statute of limitations even if it arose subsequently to the initial institution of the original action but prior to the bringing in of the parties seeking the advantage of the defense. Consequently the defense of the statute of limitations as to these additional defendants will be sustained, and no relief will be granted as against them."

Plaintiff cites in support of his appeal in this instant case, Meredith v. United Air Lines, et al., 41 F.R.D. 34 (S.D. Cal., 1966). As the trial court ruled, however, such reliance is misplaced.

In Meredith, the plaintiff brought suit against United Air Lines for personal injuries sustained when she was thrown to the floor of an aircraft by an abrupt and sharp movement of the plane. Suit was filed against United Air Lines and the United States on January 9, 1964. The accident occurred January 22, 1963. However, subsequent to the filing of the suit, information was furnished which showed that Lockheed Aircraft Corporation had been testing a jet plane in the area where the United Air Lines plane was flying. The CAB investigated and implicated Lockheed. After learning of Lockheed's possible involvement, the plaintiffs' attorney filed a proposed amended complaint naming Lockheed as an additional defendant. Lockheed

moved to dismiss the amended complaint, since the California one-year statute of limitations had run.

The trial court ruled that the amendment naming Lockheed related back under Federal Civil Rule 15(c), and that the statute of limitations did not apply. As reasons for this ruling, the court stated that Lockheed had had notice of the pendency of the claim and would not be prejudiced by being made a party to the action after the statute had run.

In the instant case, however, the posture of the plaintiff's claim against the defendant Church is completely unlike the situation presented to the Court in Meredith.

Rule 15(c) provides:

" . . . An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him" (Emphasis supplied).

Plaintiff has failed to bring his claim within the relief afforded by the provisions of this Rule. The trial court permitted plaintiff additional time to develop these points, if possible, in its order of July 12, 1970 (R. 12).

Plaintiff's efforts in this regard culminated in the deposition of Domenico Tropea (R. 16). An examination of the transcript of this deposition shows conclusively that the corporate defendant did learn of the occurrence of the accident involving the minor, but that the Church had no

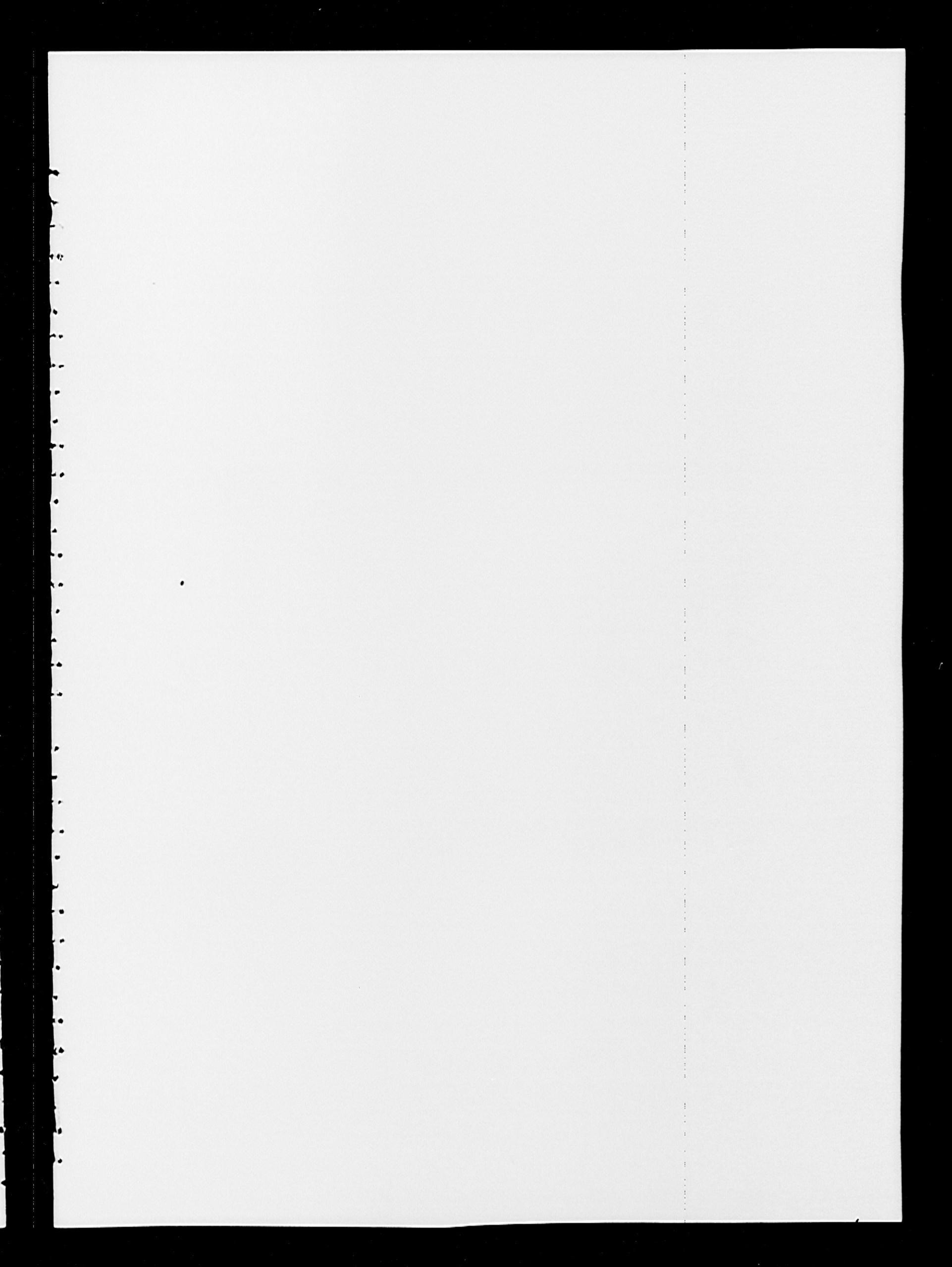
knowledge whatsoever of the institution or existence of any legal action prior to service of the summons and amended complaint on its registered agent on March 19, 1970, nor at any time prior to March 19, 1970, was the Church aware, nor did it have any knowledge whatsoever, of its alleged involvement in the claim as set forth.

As it thus appears, neither of the conditions precedent to relation back of the amendment as set forth in Rule 15(c) has been satisfied; i.e., (1) there was absolutely no notice of the institution of the action, and (2) the defendant Church did not know, nor should it have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it.

CONCLUSION

Since the statute of limitations for wrongful death actions had expired prior to the amendment of the complaint which added The Branch Avenue Full Gospel Church as a defendant, and since the defendant Church had received no notice of the institution of the suit which would have prejudiced it in maintaining its defense on the merits, and since it did not know, nor could it have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it, there was no genuine issue of material fact, and defendant, The Branch Avenue Full Gospel Church, was entitled to judgment in its favor as a matter of law. The action of the trial court should be affirmed.

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Sands - 1598-1685

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Nos. 23,731 and 23,867

Answers - 1686-1733.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WINE & LIQUOR SALESMEN & ALLIED WORKERS LOCAL 195 a/w
DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS,
INTERNATIONAL UNION OF AMERICA, AFL-CIO, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

THE BRESCOME DISTRIBUTORS CORPORATION, Respondent

APPENDIX, VOLUME V

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AFTERNOON SESSION

(2:00 o'clock p.m.)

TRIAL EXAMINER: On the record. Mr. Somers?

MR. SOMERS: Do you want the witness here?

TRIAL EXAMINER: I think it might be well if he remained outside, particularly if you at some time decide that you want to make an offer of proof or I may ask for it.

(The witness left the room.)

TRIAL EXAMINER: All right, Mr. Somers, I think I would like to hear your position with respect to why I should take evidence on the contract bar issue.

MR. SOMERS: Mr. Examiner, your position as you have stated leaves some question in our mind insofar as the question of waiver is concerned. First let me state, there is some question in my mind with regard to a remark that you made as to the timeliness, that the Regional Director's decision did not object to the timeliness of the motion made by the Respondent.

TRIAL EXAMINER: Well, with respect to that, let me crystalize my thoughts this way. Whether or not you did or did not timely raise the issue of the contract bar in the representation case seems to me to have no bearing on the issues before me; and I think I further said if I had to make any assumption at all, that you timely raised the issue.

MR. SOMERS: Does this mean that you assume there is no

1 waiver by the Respondent?

2 TRIAL EXAMINER: If I had to pass on it, that would be my
3 assumption; but at the present moment it seems clear that it
4 makes no difference; and I won't pass on it.

5 MR. SOMERS: In order to protect the Respondent insofar as
6 the record is concerned, I think it's absolutely necessary since
7 there is always the possibility that a reviewing body would find
8 differently, to protect our record; and in order to do that I
9 would like to make an offer of proof.

10 TRIAL EXAMINER: All right. As a matter of fact, I am
11 pleased that you are going to do it, because I may have a
12 chance to reflect on my ruling based on what you say.

13 MR. FEINGOLD: Well, ---

14 TRIAL EXAMINER: Yes?

15 MR. FEINGOLD: Before an offer of proof is made I would
16 like to be heard.

17 TRIAL EXAMINER: Well, only on the point as to whether or
18 not I should permit an offer of proof, because up to this point
19 I have ruled in your favor.

20 MR. FEINGOLD: I don't think so. Not entirely. I agree
21 with the Trial Examiner up to a certain point.

22 TRIAL EXAMINER: All right, I'll hear you.

23 MR. FEINGOLD: Now, I feel that the charge made by the
24 Respondent is a very, very serious charge, particularly since
25 I was a witness and so was Mr. Canton to the entire proceeding

1 before the Board, except for a short time when Mr. Adinolfi
2 asked for permission to use the library of the Regional Director,
3 which he did, and he was gone some time. My recollection would
4 be about half an hour or so.

5 MR. SOMERS: I would like to object to this manner of
6 presenting the position, because it is being presented in
7 evidentiary matter.

8 MR. FEINGOLD: Let me finish. I say this is a serious
9 charge. I think that there was a waiver of the contract bar.
10 a conscious waiver of the contract bar.

11 TRIAL EXAMINER: Mr. Feingold, ---

12 MR. FEINGOLD: May I finish my statement?

13 TRIAL EXAMINER: I thought you were going to get to that
14 point. I want to make it clear. I thought I had, but possibly
15 I misled you. The issue as to whether or not there was a
16 waiver of the contract bar matter in the representation case
17 is not before me; and I don't intend to pass on it.

18 MR. FEINGOLD: That's just my point. This is where we
19 may disagree. I think that the question of whether there was
20 a consent election free of any taint goes to the good faith of
21 the Respondent here. I think it's material evidence as to
22 whether this Respondent had a good faith based on the contract
23 bar; and I think that the fact that they waived after consul-
24 tation with independent counsel, and as a matter of fact as the
25 record would show that it wasn't the Respondent at all that

1 raised the question. Respondent stood mute all through the
2 hearing.

3 MR. SOMERS: This is evidence being presented in a state-
4 ment, and I don't think this is proper.

5 TRIAL EXAMINER: All right, very simply, briefly and to
6 the point, is it your contention that I should take the evi-
7 dence that the Respondent wants me to take?

8 MR. FEINGOLD: Well, in the absence of such evidence
9 you're going to consider the contract bar anyway.

10 TRIAL EXAMINER: No.

11 MR. FEINGOLD: Yes, that's what you say.

12 TRIAL EXAMINER: That's not the issue, Mr. Feingold. The
13 issue is whether or not I am going to take evidence as to
14 whether the Regional Director should have found a contract bar;
15 now, if Mr. Somers' position has any particular point, it's
16 that one.

17 MR. FEINGOLD: No. He has a further point that the Regional
18 attorney misrepresented to his client at a time when they were
19 represented by other counsel as to whether the contract was a
20 bar or not.

21 TRIAL EXAMINER: All right.

22 MR. FEINGOLD: And based on this misrepresentation they
23 went ahead and consented to an election for a certain unit.
24 Now, I think that if the Trial Examiner is going to consider
25 this contract as a bar, separate and apart from what happened

1 in the "R" case and what happened on July 5, 1967 in the
2 Regional Director's Office, I think the Trial Examiner must
3 take into consideration what happened in Boston; and I think
4 this goes to the good faith of the employer in this situation.
5 Now, let me give an illustration.

6 TRIAL EXAMINER: All right.

7 MR. FEINGOLD: Supposing ---

8 TRIAL EXAMINER: Mr. Feingold, let me break in here. Your
9 argument essentially is that I should take this evidence in
10 order that I might find that Respondent had waived this con-
11 tention.

12 MR. FEINGOLD: That's part of it, and also it reflects
13 on the good-faith doubt of the employer. I think it's material.

14 TRIAL EXAMINER: That may or may not be so.

15 MR. FEINGOLD: May I clarify my position? I think initially
16 what happened here spells out a waiver and that it should
17 not be considered. Once having stipulated to the fact that
18 there was no contract bar here, personally I don't think any
19 evidence should go into the record, and I don't think the Trial
20 Examiner should consider this contract bar at all. It should
21 be deemed that they waived it; but I say this, that if the
22 Trial Examiner is disposed to accept the contract bar, and I
23 think the Trial Examiner so has indicated in what's in the
24 record in our informal discussion, then I think we should not
25 have an offer of proof here; but I think this is of a very

1 serious nature and that the testimony should go in to show that
2 there was a conscious waiver as to that at the conclusion of
3 that testimony; and I respectfully submit it will spell out a
4 waiver so that it could not be considered at all in your de-
5 liberations as to whether there was a good-faith doubt.

6 Now, if I may divert for just a minute and give you an
7 illustration. Suppose an employer did not have a good-faith
8 doubt but wanted more time in order to erode and dissolve a
9 majority and made no effort whatsoever to have a card check or
10 do any of the other normally-expected things from an employer
11 in that situation and went through the procedures that we find
12 in this case or which are indicated here, and then at a sub-
13 sequent time when it had assurance that the majority may or may
14 not be dissolved, as an afterthought, comes up with this kind
15 of a defense, I don't think there is any room for this defense
16 at this stage of the procedures; and if the Trial Examiner feels
17 that he should consider it in connection with the good-faith
18 doubt, then I think all the evidence should go in to settle the
19 question of whether there is a waiver or not; because you can't
20 have one without the other. You just can't pick piecemeal some
21 part of what happened and then say there was no waiver. They
22 raised the defense. Neither General Counsel nor I raised the
23 position; but having brought it out into the open, I think it's
24 a matter of a very serious nature.

25 TRIAL EXAMINER: Mr. Marrow.

1 MR. MARROW: Well, at the moment, I haven't heard the
2 offer of proof, so I don't know what's being alleged: but I
3 by no means -- and when I say I, I speak for the General
4 Counsel -- wish to have any impressions created by my silence
5 that we are agreeing there was any misrepresentation or mis-
6 conduct by the Board agent. I would take the position that
7 what transpired is totally irrelevant to this proceeding, that
8 there is a consent, there is a transcript describing what pur-
9 portedly took place before the consent, and any attempt to re-
10 litigate the issues would be beyond this proceeding, and cer-
11 tainly not a proceeding to which the Regional Office would
12 necessarily want to be a party or get involved, not that we
13 have anything under the rug that we are trying to conceal. I
14 don't think it has any relevance to this particular hearing.

15 MR. SOMERS: We have taken the position that the "R" case
16 has no relevance to the proceeding, and neither do the objec-
17 tions; and the Regional Director is the one who asked that they
18 be consolidated.

19 TRIAL EXAMINER: Mr. Somers, I would appreciate it if you
20 would make the offer of proof that you have, and I am recon-
21 sidering the tentative decision that I had made: but I would
22 like to do it on the basis of the best record possible.

23 MR. FEINGOLD: May I make one other statement that I meant
24 to make and overlooked -- that had the Respondent in the "R"
25 case raised the contract bar at that time, the Charging Party

1 here would have thoroughly litigated the issue as to whether
2 the Association was or was not a legitimate organization.

3 MR. SOMERS: I don't think that's relevant at that time.

4 MR. FEINGOLD: That certainly is an important thing. They
5 now take this position.

6 MR. SOMERS: This is exactly the position we are taking,
7 that if the contract bar issue had not been misrepresented to
8 the Respondent, that in fact they never would have gone ahead.

9 TRIAL EXAMINER: All right, I've heard enough argument.
10 Let me have the offer of proof.

11 MR. SOMERS: I offer to prove through this witness that
12 at a meeting held on July 5, 1967 at the office of the NLRB,
13 present were Mr. Quarles representing the NLRB, Mr. Mervyn
14 Lentz, Mr. Al Weschler being the attorney for the Respondent
15 at that time; representing the Association was Mr. Adinolfi;
16 representing the Charging Party were Mr. Feingold as their
17 attorney and Mr. Canton; and that at that time the 1960 con-
18 tract was shown to Mr. Quarles by Mr. Weschler and Mr. Adinolfi;
19 and at that time the position was set forth that they believed
20 this was a contract bar.

21 TRIAL EXAMINER: Who took that position?

22 MR. SOMERS: This was asserted by both Mr. Weschler and
23 Mr. Adinolfi. At that time Mr. Quarles read the contract,
24 subsequently recommended that Attys. Adinolfi and Weschler read
25 a case whose name was "General Extrusion." The case apparently

1 was read by both of these parties. Mr. Adinolfi came back and
2 asserted he didn't see the relevance of this case to the issues
3 at hand -- namely, the 1960 contract as a bar. Mr. Weschler
4 agreed. At that time Mr. Quarles stated that even though that
5 may not be the case in point, he was certain this contract was
6 a bar. At that time Mr. Weschler and Mr. Lentz discussed Mr.
7 Quarles' position.

8 TRIAL EXAMINER: Mr. Quarles' position was what?

9 MR. SOMERS: Mr. Quarles took the position that even
10 though the case "General Extrusion" may not be in point, that
11 the 1960 contract was a bar, and he was certain of it.

12 TRIAL EXAMINER: That it was a bar?

13 MR. SOMERS: That it was a bar.

14 MR. FEINGOLD: Mr. Quarles said that?

15 MR. SOMERS: Yes.

16 Now, at that time Mr. Weschler and Mr. Lentz conferred,
17 and Mr. Weschler stated that Mr. Quarles, since he is with the
18 Board, must know what he is talking about, and decided that
19 based upon what Mr. Quarles was stating that they would con-
20 sent to an election; and Mr. Lentz agreed that they would
21 based upon Mr. Quarles' statement.

22 TRIAL EXAMINER: Will you read that back? Mr. Somers, I
23 wonder if you haven't missstated yourself.

24 MR. SOMERS: Excuse me? He stated that the contract was
25 not a bar. I'm sorry.

1 TRIAL EXAMINER: Read it back to me anyway.

2 MR. FEINGOLD: May I ask how the Trial Examiner knew that
3 Mr. Somers was misstating himself?

4 TRIAL EXAMINER: Quite simple. Mr. Somers has been claim-
5 ing all along here that the Board agent misled Respondent into
6 signing a consent election agreement on the grounds that the
7 contract was not a bar.

8 MR. FEINGOLD: Then he said that he cited the "General
9 Extrusion" case which was ---

10 TRIAL EXAMINER: I'm not going to get into it anymore. If
11 the offer of proof stood as originally stated, I don't have
12 any issue before me.

13 MR. SOMERS: Let me correct the record. He stated that
14 the contract was not a bar.

15 TRIAL EXAMINER: Gentlemen, I'm not going to get involved
16 in technicalities involving the misslips and the use of the
17 negative or the failure to use the negative. I'm more inter-
18 ested in the substance and what you're trying to get. If the
19 Court Reporter will read me back the offer of proof, I would
20 appreciate it.

21 (The offer of proof was read by the Reporter.)

22 MR. FEINGOLD: Is that the end of the statement?

23 TRIAL EXAMINER: That's your complete offer, I assume.

24 MR. SOMERS: Yes.

25 TRIAL EXAMINER: Well, gentlemen, I thought that I had

1 this decision made for reasons that I had given you, but one
2 new point has been suggested to me which gives me some trouble.
3 That is that this incident may bear on Respondent's good or
4 bad faith in refusing to bargain. I don't see how. Mr.
5 Feingold, you raised the point. What difference does it make
6 to my findings of good or bad faith what Mr. Quarles may or
7 may not have said?

8 MR. FEINGOLD: Well, let's take the negative of it. Let's
9 assume Mr. Quarles never said this. Let's assume that "General
10 Extrusion" wasn't the case cited, and let's assume other things
11 that they attribute to Mr. Quarles didn't happen. Let's assume
12 that it was the "Pacific Pulp" case that was cited to Mr.
13 Adinolfi, and that Mr. Weschler -- I don't know what conferences
14 he had with Mr. Adinolfi, but it was Mr. Adinolfi who carried
15 the ball here and not the Respondent's counsel, but let's
16 assume in negative of all these things. I think it reflects
17 on their good faith. It becomes a frolic abandon.

18 TRIAL EXAMINER: Gentlemen, I think my original thoughts
19 on this matter were the accurate ones. I'm going to reject
20 the offer of proof, and I'm going to limit you, Mr. Somers,
21 in developing what Mr. Quarles may or may not have said. Well,
22 I think the whole colloquy at this point is irrelevant to my
23 case.

24 Now, I'm going to adopt an unusual practice. Mr. Feingold,
25 if you want to make a counter-offer of proof, I'll permit it.

1 If you will make it brief, I'll take it right now.

2 MR. FEINGOLD: I think this is a serious matter, and I'll
3 make it brief.

4 TRIAL EXAMINER: All right.

5 MR. FEINGOLD: The case was originally scheduled for
6 June 30. Upon request of the Respondent it was adjourned to
7 July 5th with the understanding that the informal conference
8 would precede the formal hearing. We did have an informal
9 discussion off the record for some time. Not only did Mr.
10 Quarles participate in this dicussion, but also Mr. Coleman,
11 who was the supervisor of Mr. Quarles. I recall clearly that
12 Mr. Adinolfi presented a minute book, and in that minute book
13 there was a carbon copy of a document which I saw hastily,
14 and then it was turned over to Mr. Quarles and Mr. Coleman who
15 was also in the room. They read it through, and Mr. Adinolfi
16 said, "Why, in 1952 we were certified as the Union, and we
17 have had this collective bargaining agreement since 1960 which
18 renews itself under the terms thereof and has never been re-
19 voked," etc., etc. Mr. Quarles and Mr. Coleman, Mr. Adinolfi
20 and Mr. Lentz all engaged in a discussion. Mr. Lentz said that
21 he didn't know why this petition should not be dismissed be-
22 cause he had reason to believe that the members of the Associa-
23 tion didn't want this Union at all and made a claim that the
24 cards were either forgeries or obtained through misrepresenta-
25 tion. Mr. Quarles then informed Mr. Lentz that he had a right

1 to litigate any issue he wanted, that he was not suggesting
2 anything for them to do. However, there were cases, based
3 upon what he saw in the minute book, and specific reference was
4 made to the "Pacific Pulp" case, a 1959 case. I'm not sure of
5 the date of it. Mr. Lentz persisted and said, "I want to see
6 the cards. I challenge their authenticity. I challenge that
7 they have sufficient cards for an election." Mr. Quarles
8 assured him that this was an administrative finding and that
9 unless they had some proof of forgeries or unless they had
10 some proof of coercion that would induce the Regional Director
11 to run a preliminary hearing on the authenticity of the cards,
12 that he would have to accept the cards. Mr. Lentz then stated--
13 and he was probably the most active participant in this prob-
14 ably along with Mr. Adinolfi. I don't recall that Mr. Weschler
15 took much part in the proceedings at all. Mr. Lentz then
16 stated, "Well, we have some sort of a certificate," and Mr.
17 Quarles then informed him that sometimes in organizations
18 people do sign multiple cards, and unless he is willing to
19 attack the genuineness of these cards at this time, if there
20 are 30 per cent or more of the cards, he would have to enter-
21 tain the petition.

22 In the meantime, Mr. Adinolfi said for his way of think-
23 ing he has a contract, and he would like to read the cases. He
24 would be much surprised if there was a case like that. They
25 said, "Look, you can exercise whatever judgment you want. If

1 you want to use our library, we'll take time out."

2 That's what happened. I don't know whether Mr. Adinolfi
3 was accompanied by Mr. Weschler to the library. I have no
4 recollection, but time was taken out before starting the for-
5 mal part of the hearing, and when Mr. Adinolfi came back and
6 said he had read the cases and that he was satisfied with the
7 cases, we then discussed whether there would be a consent
8 election, and there was some talk about what the unit should
9 be, but there wasn't very much talk about it, and thereafter
10 it was agreed. Either Adinolfi or someone said, "Well, if
11 you're so certain that you have a certificate and that all
12 the salesmen are with you, why don't you have an election and
13 get it over with," and that sort of talk. There was certainly
14 no misrepresentation made by anyone present at that meeting
15 within my hearing.

16 When the parties seemed of their own free will to be in
17 accord of a consent election, there was only one open item, a
18 display man by the name of Bonaiuto, whether he should be in
19 the unit at all. Finally it was agreed since he was the 19th
20 man if everybody voted, his vote would not in the final analy-
21 sis alter the results of the election one way or the other; and
22 the petitioner agreed to include him upon the insistence of the
23 management and the Intervenor.

24 With that, the formal record was then opened. We have a
25 transcript of what happened, and Mr. Adinolfi stated that based

1 on the cases he was satisfied that there was not a contract bar,
2 and I think ---

3 TRIAL EXAMINER: You say that statement is on the record?

4 MR. FEINGOLD: It's on the record in the transcript of
5 the record.

6 TRIAL EXAMINER: Gentlemen, I'm not interested in seeing
7 it.

8 MR. FEINGOLD: He made that statement that after reading
9 the cases he was satisfied.

10 TRIAL EXAMINER: Mr. Feingold, your offer of proof is also
11 rejected. I might suggest to you, Mr. Somers, and I am sure
12 this has occurred to you independently, that if you have any
13 other witnesses that you intended to call on this particular
14 issue, my ruling would be the same; but the record ought to
15 show what witnesses you intend to call or had intended to call
16 on the issue in addition to Mr. Lentz.

17 MR. SOMERS: Would you like me to state it now?

18 TRIAL EXAMINER: Whenever you desire.

19 MR. SOMERS: I would like to state now that one of the
20 witnesses that would be called as to these events would be Mr.
21 Adinolfi who would testify as to the same offer of proof inso-
22 far as he participated.

23 TRIAL EXAMINER: All right, that's rejected also.

24 MR. FEINGOLD: May I state that although I do not have
25 the power, I would also like as witnesses the two staff members

1 of the First Region NLRB's Office.

2 TRIAL EXAMINER: Gentlemen, I've tried to hear you out.
3 I think your positions are now all on the record fully. I've
4 given this matter a great deal of thought, and my conclusion
5 is that the matters you have suggested are not before me. I
6 do not see how they can materially affect the decision that
7 must be made in this case, and I'm excluding that testimony.
8 If we can get the witness back in, we can proceed.

9 (The witness entered the room and resumed the stand.)

10 TRIAL EXAMINER: All of you gentlemen have an exception
11 to my ruling insofar as it conflicts with your position.

12 MR. MARROW: Let the record show that I agree with the
13 Trial Examiner's ruling.

14 TRIAL EXAMINER: In this instance, you don't have an
15 exception.

16 MR. FEINGOLD: May I ask the Trial Examiner that he will
17 consider independently the question of whether there was or
18 was not a matter of a contract bar here?

19 TRIAL EXAMINER: Insofar as that issue may affect a deci-
20 sion on the refusal to bargain, yes, I will.

21 MR. FEINGOLD: Then to that ruling I respectfully except,
22 and I feel that all the testimony becomes essential to show
23 there was a waiver.

24 TRIAL EXAMINER: One of the things you have in your favor,
25 Mr. Feingold, is if I make a mistake, you have other people to

1 P R O C E E D I N G S

2 TRIAL EXAMINER BARBAN: On the record. Mr. Lentz, will
3 you resume the stand.

4 Whereupon,

5 MERVYN LENTZ

6 resumed the stand as a witness called by and on behalf of the
7 Respondent and, having been previously duly sworn, was examined
8 and testified as follows:

9 TRIAL EXAMINER: Mr. Lentz, you continue under oath.

10 THE WITNESS: Yes, sir.

11 TRIAL EXAMINER: Mr. Marrow, as I understand it, Mr. Lentz
12 has been turned over to you for cross-examination.

13 CROSS-EXAMINATION

14 Q (By Mr. Marrow) Mr. Lentz, you have been present during
15 these entire proceedings since the 8th of January?

16 A Yes, sir.

17 Q And you have been in Court here every day or in the hear-
18 ing room every day?

19 A Yes, sir.

20 Q And you have heard the testimony of all the witnesses who
21 have gone before you?

22 A Yes, sir.

23 Q And in connection with that to some extent you have assist-
24 ed Mr. Somers in his examination of the witnesses?

25 A I don't know how you would characterize assisted. There

1 were things that occurred during the course of the business that
2 he wanted to learn about. He would consult me, yes.

3 Q You were available here for point of information and
4 clarification?

5 TRIAL EXAMINER: All right, Mr. Marrow, that was the only
6 reason to permit Mr. Lentz to continue in the hearing room. We
7 will continue on that basis.

8 Q (By Mr. Marrow) Now, I would like to direct your thoughts
9 to the physical setup of the Brescome Plant. I understand it
10 is now on Newfield Avenue?

11 A Locust Street.

12 Q I have heard the two locations. Now, with respect to the
13 Locust Street operation, could you give us a physical picture
14 of the plant and office and warehouse?

15 A Well ---

16 MR. SOMERS: Would it be better at this point for Mr.
17 Lentz to draw something so that would give us an idea, and he
18 could probably save time.

19 TRIAL EXAMINER: That depends on how General Counsel wants
20 to proceed. Mr. Lentz may be so good in the descriptive arts
21 that I may not need a drawing. Do you want a drawing?

22 MR. MARROW: Let's see how the description is.

23 THE WITNESS: You walk into a small lobby. Facing the
24 entrance is the telephone operator on the switchboard.

25 Q (By Mr. Marrow) Is she also the receptionist for people

1 coming in to see people in the plant?

2 A Yes. To the left of that is the General Office, and
3 entering from the General Office, south of the General Office
4 is the IBM Department. To the right of the lobby there is a
5 hallway which leads to my office and my father's office. If
6 you walk straight from the lobby, it leads into the Sales Room.
7 Going through the General Office to the east there is a door-
8 way leading to a small hall which in turn leads to the ware-
9 house from the Sales Room. So that there are two accesses to
10 the warehouse, from the General Office and from the Sales Room.

11 Upstairs we have an area which we use for promotional material.

12 Q The warehouse that you describe leading off the General
13 Office, is it physically connected with the same building? It
14 is not a part of a separate building?

15 A Yes, it is part of the same building.

16 Q Is that the only entrance? Is there also an outside load-
17 ing platform?

18 A A loading platform from the outside, yes.

19 Q Is there an indoor garage for vehicles that you use for
20 deliveries?

21 A The loading platform is under cover and the trucks are
22 pulled under cover to the loading platform in the warehouse.
23 There is a truck storage space between the outside and the
24 loading platform. But part of the warehouse is contiguous to
25 the office and part of the warehouse is directly accessible

1 and next to the Sales Room.

2 Q Now, with respect to the warehouse itself, is there a
3 time clock located in the warehouse?

4 A There is a time clock in the hallway leading to the ware-
5 house.

6 Q And physically where is this located, where is this near?

7 A Between ~~the~~ door -- it is near the entrance to the doorway
8 leading to the warehouse.

9 Q Now, when the drivers and the warehousemen come in to
10 report for work, what entrance would they normally use?

11 A They would either use the main entrance or the side
12 entrance.

13 Q Do you have any observation as to what entrance they use
14 mostly?

15 A No, they use both entrances.

16 Q And they would pass through or by this time clock on their
17 way to work?

18 A The night men might come in and through the main entrance
19 and go through the Sales Office and then go into the warehouse
20 and then go to the time clock. Could go into the Sales Office
21 first.

22 Q But all of the drivers and warehousemen do punch a time
23 clock?

24 A Yes.

25 Q And who keeps custody of the time cards, do you know? Are

1 they picked up daily?

2 A A man by the name of Ray Gerard.

3 Q And what is his position?

4 A He is an assistant to Stanley Goldstein.

5 Q By the way, in the General Office, is Mr. Goldstein in
6 that area?

7 A In the general area.

8 Q Does he have a private office?

9 A Yes.

10 Q How about Mr. Gerard, is he also in that same office?

11 A Mr. Goldstein's office.

12 Q What other employees would utilize or be located in what
13 you have described as the General Office?

14 A The Credit Manager, Office Manager, and about three other
15 assistants.

16 Q Do you have any clerical employees?

17 A Yes.

18 Q Is this where they would work?

19 A Right.

20 Q People who do billing and things of that nature?

21 A The billing is done in the IBM Department.

22 Q Tell me about the IBM Department, who works in there?

23 A Two day men and night man.

24 Q And is this a separate location, separate area?

25 A It's a separate room off the General Office.

1 Q Now, with respect to the Sales Office, could you give us
2 your best estimate as to the physical size of the Sales Office
3 the dimensions?

4 A About 23 feet long and about 18 feet wide.

5 Q And within the office itself could you give us just a
6 brief description of the physical setup of the furniture and
7 other arrangements in the office?

8 A There are about six or seven tables, about the width of
9 these tables here, at which salesmen sit, two salesmen at a
10 table. They use them as desks. They have draws in the front
11 of them.

12 Q For the record, Mr. Lentz, you are pointing to a table
13 here in the hearing room which I would estimate to be six feet
14 long by three feet in width with four legs and hollow under-
15 neath with perhaps a single or double draw?

16 A Formerly at the other office we had a single desk for each
17 man. We found this was more efficient. Actually, each man has
18 a desk area.

19 Q Is he assigned a particular desk area?

20 A Yes.

21 Q And he has a draw where he keeps his material?

22 A That is right.

23 Q And does each salesman have a telephone?

24 A No, there are several telephones in the office, but there
25 is not a telephone for each salesman.

1 Q Where are the telephones laid out physically?

2 MR. SOMERS: Where?

3 Q (By Mr. Marrow) In the Sales Room.

4 A The telephone at the rear of the office, a telephone at
5 the secretary's desk, a telephone at the Administrative
6 Assistant's desk and a telephone at the Sales Manager's desk.

7 Q With respect to the number of these tables, you said there
8 were about six?

9 A Six or seven.

10 Q Now, is there any other furniture of that type in the
11 Sales Room other than the tables that you have described?

12 A Tables in the front of the room for display of merchandise,
13 a podium for meetings, combination bar and kitchen arrangement
14 as part of the Sales Room.

15 Q Are there any desks in the Sales Room?

16 A A little larger desk for the Sales Manager.

17 Q And if you could describe that desk for us?

18 A About the size of yours, maybe a little larger.

19 Q When you say mine?

20 A I mean the one that you are sitting at.

21 Q That is about --

22 A A little larger than that, a little wider.

23 Q Would you call it a standard office type desk?

24 A Probably smaller than the standard.

25 Q And it has draws?

1 A Right.

2 Q And is there a telephone on that desk, if you know?

3 A The telephone is on the desk or near it.

4 Q And that telephone is for the use of the Sales Manager?

5 A Either the Sales Manager or whoever is in the area. Others
6 use the same phone for taking orders. The salesmen might use
7 the phone. Sales clerks, order clerks might use the phone.
8 It is not for the exclusive use of the Sales Manager.

9 Q How about the desk itself, is that for the exclusive use
10 of the Sales Manager?

11 A Occasionally the Administrative Assistant in the Sales
12 Office will use the desk.

13 Q Now, we have had some testimony about this Administrative
14 Assistant. Could you tell us who that is?

15 A At the present time it is a woman. Formerly it was a man
16 by the name of Peter Guttermann.

17 Q And were the duties, are the duties and responsibilities
18 of the Administrative Assistant?

19 MR. SOMERS: Objection.

20 TRIAL EXAMINER: Overruled.

21 THE WITNESS: To write memos to the salesmen, physically
22 write out quotas, hand them to the salesmen, distribute pro-
23 motion material, compute figures which are used in measuring
24 salesmen's performance, and the figures of quotas.

25 Q (By Mr. Marrow) And does this individual have a desk or

1 working area in the Sales Room?

2 A At the desk in the Sales Room, yes.

3 Q And how much of his or her time would this individual
4 spend during the working day in the Sales Room?

5 A Most of the time.

6 Q So I take it from your testimony that when a regular
7 salesman comes in in the morning, this Administrative Assis-
8 tant would be in the Sales Room?

9 A Right.

10 Q Even after the salesmen go out on their selling missions,
11 he or she would remain there to perform the functions that you
12 have just described?

13 A Right.

14 Q What relation, if any, does this individual have to the
15 Sales Manager as far as work duties?

16 A Works with him.

17 Q If the Sales Manager needed some memos or letters to be
18 made up, he would dictate or turn it over to the assistant?

19 A The Sales Manager or myself.

20 Q Do you have a secretary of your own?

21 A Yes.

22 Q Apart from the Administrative Assistant?

23 A Yes.

24 Q How long has the company utilized the services of an
25 Administrative Assistant?

1 A We always had one.

2 Q So prior to the present individual, Mr. Guttermann was
3 acting in that capacity for some number of years?

4 A Right.

5 Q Has this individual always been physically located in the
6 Sales Room near the Sales Manager?

7 A Occasionally he would help in the other departments when
8 there was a need. If there is a need in the General Office,
9 they would help there. If there is a need in the warehouse,
10 they would help there. There is an interchange of jobs. Just
11 as if there is a need between the salesmen and the warehouse,
12 if a need arose they would pitch in and help.

13 TRIAL EXAMINER: The witness nodded his head to the
14 specific question asked. The question was has this individual
15 always been located in the Sales Room near the Sales Manager,
16 and to that question the witness nodded.

17 THE WITNESS: Usually yes.

18 Q (By Mr. Marrow) Now ---

19 A Giving you an answer in a general way, you asked about
20 memos given the Administrative Assistant from the Sales Manager.
21 Many of these are directives that I have given to the Sales
22 Manager to be given to the men.

23 MR. MARROW: I didn't ask that. I respectfully ask that
24 it be stricken.

25 THE WITNESS: You want a full explanation?

1 TRIAL EXAMINER: Gentlemen, let's proceed.

2 MR. FEINGOLD: I don't think there was a question posed
3 to the witness.

4 TRIAL EXAMINER: I understand that he is giving a de-
5 scription of this particular individual.

6 Q (By Mr. Marrow) Now, just to sum up the physical picture
7 of the Sales Room, there are a number of tables that you have
8 described. There is a desk that the Sales Manager occupies?

9 A Those tables are desks. Formerly we had individual desks;
10 now they call them tables, but they are desks. The room is
11 composed of desks, yes.

12 Q What you call a desk could also be called a table. It is
13 utilized for business purposes?

14 A Semantics.

15 Q When you use the term "desk," aside from semantics, I am
16 talking about a description of an ordinary office type desk
17 you ordinarily see in an office, barring modern innovations in
18 office decorum. The desk you have described as being occupied
19 by the Sales Manager is similar to the type that I am sitting
20 at. How many of this standard type desk are there in the room
21 and who occupies them?

22 A The desk for the Administrative Assistant is approximately
23 the same size.

24 Q So there would be just the two desks of that type?

25 A Right.

1 Q How about the individual so-called wine specialist or wine
2 sales manager, Mr. Amoroso, what type of facility does he have?

3 A Since there was not more room at the table-desk of this
4 size, there is another small desk at the end of the office
5 which he occupies, and that would be that size or a little
6 smaller than that.

7 Q By that ---

8 A The size of the one you are sitting at.

9 Q Pointing to the desk that I am sitting in front of?

10 MR. SOMERS: Could we offer that desk in evidence?

11 TRIAL EXAMINER: If you can make arrangements with the
12 State of Connecticut and the Court Reporter. The desk at
13 which the General Counsel is presently sitting is a standard
14 size stenographer's desk equipped with a tilt top on one side
15 to take a typewriter. Go ahead, Mr. Marrow.

16 Q (By Mr. Marrow) And this desk that Mr. Amoroso occupies
17 is his desk during his tenure as wine specialist?

18 A Merely a functional desk ---

19 MR. FEINGOLD: I move to strike that out.

20 MR. SOMERS: I ask that the witness be permitted to com-
21 plete his answer.

22 TRIAL EXAMINER: I thought he had. I will take your
23 answer.

24 MR. FEINGOLD: May we have the question?

25 (The last question was read by the Reporter.)

1 TRIAL EXAMINER: Mr. Marrow, will you complete your ques-
2 tion?

3 Q (By Mr. Marrow) This desk utilized by Mr. Amoroso is his
4 desk for all intents and purposes, is it not?

5 A The size of the working portion of the desk is no larger
6 than the desk used by the salesmen, and it has a draw like the
7 salesmen ---

8 MR. FEINGOLD: I move to strike the answer out as not
9 responsive.

10 TRIAL EXAMINER: I am not going to do that. Mr. Amoroso
11 occupies working space in the salesmen's room?

12 THE WITNESS: Yes, sir.

13 TRIAL EXAMINER: It is the same room we have been talking
14 about before?

15 THE WITNESS: Yes, sir.

16 TRIAL EXAMINER: Now, the space that he occupies, does he
17 have a working space to himself?

18 THE WITNESS: Yes, sir.

19 TRIAL EXAMINER: That is not used by anybody else normally?

20 THE WITNESS: Normally just as the other salesmen, yes.

21 TRIAL EXAMINER: I don't understand that answer. Is this
22 a working space that is normally designated as his?

23 THE WITNESS: Right.

24 TRIAL EXAMINER: Now, will you describe that working
25 space, what it physically looks like?

1 THE WITNESS: It is a desk approximately the size of that

2 TRIAL EXAMINER: The one Mr. Marrow is occupying?

3 THE WITNESS: Right, with a draw in the middle and I be-
4 lieve one file draw, and that is it.

5 TRIAL EXAMINER: Now, in relation to the other furniture
6 in the Sales Room, where would Mr. Amoroso's desk be located?

7 THE WITNESS: In the rear, close to the other wine sales-
8 men's desks.

9 TRIAL EXAMINER: Are the wine salesmen's working space
10 grouped together apart from the liquor salesmen's working space?

11 THE WITNESS: Not apart but in the rear of the liquor
12 salesmen.

13 Q (By Mr. Marrow) Does Mr. Amoroso have a telephone?

14 A There is a telephone close to him but not a telephone
15 for his personal use, no, sir.

16 Q Now with respect to these telephones, is there any call
17 system utilized when the phone rings? Could it be for anybody?
18 In other words, do certain individuals have a particular ring
19 that is used to indicate that it's their call on their phone?

20 A No.

21 Q But if calls came in for Mr. Amoroso, would they ring on
22 a particular telephone?

23 A It could come in on any of the Sales Office telephones.

24 Q How about the Sales Manager?

25 MR. SOMERS: During what period?

1 Q (By Mr. Marrow) During the period of 1960-67. How long
2 have you been in this building at Locust Street?

3 A About nine years.

4 Q During that period would all the Sales Managers' calls
5 come in on a particular telephone?

6 A Could ring at either desk or the Administrative Assis-
7 tant's desk.

8 Q Now, who opens the operation up in the morning? Who is
9 responsible for that or is it a 24-hour operation?

10 A There is no system set up for anything to be opened in
11 the morning. You mean open the office physically, who comes
12 in first?

13 Q Yes.

14 A Either the Warehouse Manager will come in first or
15 Stanley Goldstein will come in first or I will come in first.
16 It varies.

17 Q And all of you gentlemen have keys to the property?

18 A I have a key and Stanley Goldstein and the Warehouse
19 Manager, yes, sir.

20 Q Anyone else?

21 A Miss Frieda Fuehrer.

22 Q Do you know if the Sales Manager had a key?

23 A No, I know that he did not.

24 Q Now, going back to the point of time when Mr. Sandler
25 was with the company, could you fix the date when he first

1 came to work for Brescome?

2 A I would say 1964.

3 Q And how long was he with the company?

4 A About three years. I am guessing now. I don't know the
5 exact date.

6 Q And what was your position at the time Mr. Sandler came
7 to work for Brescome?

8 A Vice-President.

9 Q And were you also the Sales Manager?

10 A I was in charge of sales, yes.

11 Q And were you a participant in the interviewing and hiring
12 of Mr. Sandler?

13 A Yes, sir.

14 Q And you knew Mr. Sandler before he came to work for the
15 company?

16 A Yes, sir.

17 Q And I think you testified yesterday that he worked for
18 Schenley Company?

19 A Yes, sir.

20 Q What was his position with Schenley?

21 A Connecticut State Manager.

22 Q And that is the capacity you knew him in prior to his
23 working for Brescome?

24 A Yes, sir.

25 Q Did you approach Mr. Sandler -- when I say "you," did

1 Brescome approach Mr. Sandler to come to work for Brescome?

2 MR. SOMERS: Objection. I don't see the relevancy.

3 TRIAL EXAMINER: Sustained.

4 MR. MARROW: I think it is highly relevant and significant.

5 TRIAL EXAMINER: As to whether Brescome contacted Mr.

6 Sandler or Mr. Sandler sought employment with Brescome?

7 MR. MARROW: Certainly.

8 TRIAL EXAMINER: I will sustain the objection. If you
9 think it is highly important, you can make an offer as to what
10 you expect to adduce.

11 MR. MARROW: I will perhaps adduce it another way.

12 Q (By Mr. Marrow) Do you know what Mr. Sandler's background
13 was?

14 A He had been with the Schenley organization about 20 years.

15 Q And that is all that you knew about him?

16 A And he had been familiar with the trade in Connecticut
17 for a number of years-- the accounts, and had a good general
18 knowledge of the industry.

19 Q Both from a selling and an administrative standpoint?

20 A Selling from the distillers' standpoint.

21 Q How about with respect to the administrative responsibili-
22 ties?

23 A In the distilling end, yes.

24 Q When you say the distilling end?

25 A He worked for a distillery. He had never worked for a

1 wholesaler before.

2 Q Perhaps you can explain the difference in operations?

3 A Schenleys are distillers or suppliers. They are manu-
4 facturers. We are a wholesaler. We purchase from the dis-
5 tillers and sell to the retail trade. He had not had any ex-
6 perience in the wholesale business before joining our organi-
7 zation.

8 Q What qualifications were you looking for when you hired
9 Mr. Sandler?

10 MR. SOMERS: Objection.

11 TRIAL EXAMINER: Overruled.

12 THE WITNESS: Principally one who was familiar with a
13 major portion of the retail trade in our area and who could
14 assist us in selling and promoting our brands.

15 Q What type of assistance?

16 A Principally in the trade, in the field.

17 Q Would this be based on his personal knowledge of the people
18 in the trade?

19 A Right.

20 Q How about with respect to his knowledge of selling and
21 selling techniques?

22 A Yes, in the trade.

23 Q And with respect to his administrative ability in admini-
24 strative techniques?

25 A Well, he had no administrative background in the wholesale

1 business. We couldn't expect that he would have an expertise
2 in that area.

3 Q He did have administrative background and experience in
4 the distilling end?

5 A In the distilling end, yes.

6 Q Now, if you know in connection with Mr. Sandler's back-
7 ground at Schenley, he had charge of a number of salesmen who
8 are referred to as missionary men who go around calling on the
9 trade?

10 A Yes.

11 Q In an effort to create good relationship and promote their
12 particular product?

13 A Yes.

14 Q And that was Mr. Sandler's responsibility and function at
15 Schenley prior to coming to work for Brescome?

16 A What was?

17 Q Having charge of this group of missionary salesmen?

18 A Yes.

19 Q And they are known in the trade as missionary salesmen?

20 MR. SOMERS: Objection.

21 TRIAL EXAMINER: Overruled.

22 THE WITNESS: That is right. They have nothing to do with
23 a wholesale salesman and their job had no relationship to
24 wholesale selling.

25 Q (By Mr. Marrow) Now, did you have several meetings with

1 Mr. Sandler prior to a decision being made as to his being
2 hired?

3 A There were a few, yes.

4 Q And were there discussions as to what his financial arrangement
5 would be with Brescome?

6 A Yes, there was.

7 Q And did you participate in those discussions?

8 A Yes.

9 Q Do you recall whether at the end that was reduced to
10 writing in the form of a contract?

11 A We had -- yes, there was a written agreement for a period
12 of two years.

13 Q And do you recall what the terms and conditions of that
14 agreement were?

15 MR. SOMERS: Objection.

16 TRIAL EXAMINER: No, that will have to be overruled.

17 THE WITNESS: I can't recall the details of it. He was
18 to perform his duties in an efficient manner and spend his
19 full time in the performance of his duties.

20 Q (By Mr. Marrow) And spelled out his salary?

21 A Yes.

22 TRIAL EXAMINER: Just a moment, before you go on. I didn't
23 ask Mr. Somers for the basis for his objection.

24 MR. SOMERS: The basis of the objection is it is personal
25 information as to the contents of the agreement.

1 TRIAL EXAMINER: I thought that that was what you had in
2 mind. I would overrule that objection. The only basis of an
3 objection ---

4 MR. SOMERS: In addition to the 10 (b) period.

5 TRIAL EXAMINER: No, there is one other basis I might have
6 sustained it on. Do you want to know what it is? I don't
7 usually give advice. The only possible basis for an objection
8 that I can see to these questions is the best evidence rule,
9 and very frankly if you raise that, I am going to ask you to
10 produce the document.

11 MR. SOMERS: Well, I can't. That is why I haven't based
12 the objection on the best evidence rule.

13 TRIAL EXAMINER: Go ahead.

14 Q (By Mr. Marrow) You were telling us, Mr. Lentz, your
15 best recollection of this agreement with Mr. Sandler and what
16 was spelled out in the agreement.

17 A Well, there were certain things spelled out in the agree-
18 ment. There were other things that were orally agreed to which
19 I think should be pointed out.

20 Q Let's start with the written portion.

21 A That is all I can recall. I can't recall any other details
22 of the written agreement.

23 Q Did it indicate in that agreement what his classification
24 or job was?

25 A I don't know whether it was spelled out in the agreement.

1 He had the title of Sales Manager.

2 Q That was his title?

3 A That is right.

4 Q Do you recall with any specific accuracy what the duties
5 were if any that were described in that agreement?

6 A All I can recall was that --- I can't recall the details.
7 It was a short agreement, but I can't recall the details of
8 the agreement.

9 Q And there was a fixed salary arrangement spelled out in
10 that agreement?

11 A There was a fixed salary but in order to have a full
12 understanding ---

13 MR. FEINGOLD: I move to strike after "there was a fixed
14 salary."

15 THE WITNESS: Yes or no would not clarify this.

16 TRIAL EXAMINER: The witness has not completed his answer,
17 and I won't know whether it is responsive until he completes
18 it. Go ahead and complete your answer. Do you want the ques-
19 tion reread?

20 THE WITNESS: Yes.

21 (The last question was read by the Reporter.)

22 THE WITNESS: There was a fixed salary arranged for, but
23 it was also related to the sales that he made in the accounts
24 that he covered.

25 MR. FEINGOLD: I am going to object to the rest of it and

1 move that it be stricken.

2 MR. SOMERS: I think it is important.

3 TRIAL EXAMINER: I am not going to strike it, but I do
4 want to know this. Was it specifically stated in the agreement
5 that there was such a relation or did the agreement merely
6 state a fixed salary?

7 THE WITNESS: It wasn't specifically stated in the written
8 agreement, but it was understood and that is ---

9 MR. FEINGOLD: I am going to object to what was understood.

10 TRIAL EXAMINER: Mr. Lentz, was this relationship specific-
11 cally discussed with Mr. Sandler, and by specifically discussed
12 I mean was it discussed in detail as to how this was to be
13 computed?

14 THE WITNESS: It was discussed ---

15 MR. FEINGOLD: I am going to respectfully object to that
16 question.

17 TRIAL EXAMINER: Any question I ask may be objected to.

18 MR. FEINGOLD: I respectfully object.

19 TRIAL EXAMINER: In this instance I am going to overrule
20 the objection. Mr. Lentz?

21 THE WITNESS: It was discussed with Mr. Sandler but not
22 in detail, but it was a factor in setting a figure of the
23 salary.

24 TRIAL EXAMINER: Now that last will be stricken because
25 I assume by that you mean it was a factor in the company's

1 contemplation only?

2 THE WITNESS: Yes, sir.

3 TRIAL EXAMINER: All right, go ahead.

4 Q (By Mr. Marrow) Now that figure as arrived at did not
5 vary over the term of Mr. Sandler's employment with the company,
6 isn't that so?

7 A Right.

8 Q And no matter how much additional he did in the way of
9 selling, it would not increase the agreed salary that he was
10 to receive, isn't that so?

11 A Technically, yes.

12 MR. FEINGOLD: I move to strike out the word "technically."

13 TRIAL EXAMINER: Overruled.

14 Q (By Mr. Marrow) What do you mean by technically. Mr.
15 Lentz?

16 A We didn't change his salary, but we knew to what extent
17 he was paying for himself in relation to the sales he made in
18 his own accounts.

19 MR. FEINGOLD: I am going to move to strike out every-
20 thing after "But we knew."

21 TRIAL EXAMINER: That is denied.

22 Q (By Mr. Marrow) Now, in addition to salary, were there
23 other financial arrangements made with Mr. Sandler, if you
24 recall?

25 A He had the same fringe benefits as the other salesmen.

1 Q Now, was that spelled out in this agreement?

2 A I believe so.

3 Q And by the same fringe benefits, you are referring to the
4 health plan that the company had?

5 A The insurance.

6 Q The life insurance. Was his life insurance figure the
7 same as all the other salesmen?

8 A I couldn't honestly tell you what the life insurance
9 coverage was.

10 Q It may have been higher than the other salesmen?

11 MR. SOMERS: Objection.

12 TRIAL EXAMINER: Overruled.

13 THE WITNESS: Possibly.

14 Q (By Mr. Marrow) I assume his holiday schedule was the
15 same as the other salesmen. How about vacation?

16 A Yes, and the vacations were the same.

17 Q What was his vacation arrangement?

18 A Two weeks just as we had for the other men. We closed
19 for a two-week period, and he took his vacation when the other
20 men took their vacation.

21 Q This was all the time he worked for the Brescome Company?

22 A Yes.

23 Q That was true for the salesmen all during that period?

24 A During that period. It was different in the past, but
25 during that period, yes, we closed for a two-week period.

1 Q When you say different in the past, when did it change?

2 A Formerly we didn't. In the past we didn't close the plant
3 in that period. We staggered vacations.

4 Q Well, what year did that arrangement start in?

5 TRIAL EXAMINER: You mean in what year did the closing
6 start?

7 Q (By Mr. Marrow) Yes.

8 A Somewhere in the area of 1960.

9 Q It is your testimony that since that time the salesmen
10 have all received two weeks paid vacation?

11 MR. SOMERS: Objection. That was not his testimony.

12 THE WITNESS: I did not say that.

13 TRIAL EXAMINER: I am going to overrule the objection. I
14 think the witness understands the question.

15 THE WITNESS: They all received a two-week vacation, and
16 any sales that were made during that period, they received
17 credit for.

18 Q (By Mr. Marrow) Now, when you say they received a two-
19 week vacation, what monetary stipend did they get for the two-
20 week period?

21 A Sales that were made.

22 TRIAL EXAMINER: Mr. Marrow, can't we get on to something
23 more pertinent? Does it make any difference what money if any
24 they got during the two-week vacation?

25 MR. MARROW: I think it is highly pertinent. I want to

1 find out what one man got or one man whose title was Sales
2 Manager got the same as the other salesmen, or if there was a
3 difference.

4 TRIAL EXAMINER: All right, that is pertinent. Go ahead.

5 Q (By Mr. Marrow) Were the men paid, Mr. Lentz, for this
6 two-week period?

7 A Well, it requires more than a yes or no answer. You are
8 talking about earnings during this period, and I think I should
9 have an opportunity to explain this fully so that the facts
10 are known.

11 Q All right, explain it.

12 A During a portion of the period, accounts were allowed to
13 pick up merchandise at the plant and the salesmen would re-
14 ceive a commission on the goods picked up from their accounts.
15 In addition to that, there was a large amount of merchandise
16 that was sold previous to the time that we closed the plant,
17 and the commissions on the merchandise sold was of substantial
18 amount. So that in addition to the goods that were sold be-
19 fore vacation, they sold extra goods in anticipation of the
20 closing, and in this regard it would amount to a paid vacation.

21 Q But the fact is that this was not a predeterminable
22 amount. It could vary depending upon what these pickups dur-
23 ing the period were and also what commissions were pending at
24 the time they went on vacation?

25 A Not only the pickups but what was sold prior to the closing,

1 yes.

2 Q A man did not know when he left on vacation exactly in
3 dollars and cents what he was going to get?

4 MR. SOMERS: Objection.

5 TRIAL EXAMINER: Overruled.

6 THE WITNESS: You could estimate it.

7 Q (By Mr. Marrow) How about Mr. Sandler, how was his vaca-
8 tion paid?

9 A He received the same that he had always received.

10 Q It wasn't figured the same as the other salesmen, was it?

11 A No.

12 Q How was his vacation figured?

13 A The same as he always was getting.

14 Q How was that?

15 A He received his regular weekly pay.

16 Q Was that also true of Mr. Horowitz and Mr. Tarre?

17 A Was what true?

18 Q That their vacation was a predetermined amount based on
19 their annual salary, their vacation pay?

20 A Yes.

21 Q Now, after the time Mr. Sandler was hired or at the time
22 did you personally have occasion to spend some time directly
23 with him teaching your operation and how it worked?

24 A Yes.

25 Q And how long a period did that take?

1 A Teaching him the operation?

2 Q Yes.

3 A A period of a few weeks.

4 Q And after that he assumed his regular duties as you have
5 described them in your testimony earlier?

6 A Yes, sir.

7 Q Now, how often if at all did you have occasion to accom-
8 pany Mr. Sandler through his daily duties after this initial
9 break-in period?

10 A We frequently were in the trade together, the retail trade.

11 Q You would drive together to call on accounts?

12 A Yes, sir.

13 Q Any other occasions?

14 A Any other occasions?

15 Q Yes, that you would accompany Mr. Sandler in his daily
16 duties?

17 A Outside of the office?

18 Q Yes.

19 A Principally that would be it, calling on accounts.

20 Q Were these all wholesale type accounts that you called on
21 together?

22 A Yes, sir.

23 Q Retail accounts, I am sorry, drugstores, package stores?

24 A Restaurants, hotels.

25 Q Now, at the time Mr. Sandler first came with you, did you

1 have occasion to introduce him to the trade so to speak, people
2 he would be calling on?

3 A He knew most of them.

4 Q Well, I asked if you had occasion to let people know that
5 he was working with Brescome?

6 A Yes, sir.

7 Q Did you introduce him or let the public know, as it were,
8 the public that you do business with, that he was your new
9 Sales Manager?

10 A Let them know that he was affiliated with Brescome, yes,
11 sir.

12 Q I asked you specifically if you let them know that he was
13 your new Sales Manager.

14 A I couldn't tell you now the language I used at that time
15 when I introduced him.

16 Q Do you know whether or not Mr. Sandler had business cards
17 that were prepared by the company?

18 A Yes.

19 Q Do you know that those cards identified him as Sales
20 Manager?

21 A Right.

22 Q Now, in addition to the retail accounts, did you and Mr.
23 Sandler also have occasion to attend affairs and functions
24 sponsored by the distillers?

25 A Yes.

1 Q And you would go to these things together?

2 A Sometimes I would go alone; sometimes Mr. Sandler would
3 accompany me; sometimes all the salesmen would accompany me,
4 yes.

5 Q And obviously on the times you went alone, you were deal-
6 ing directly without Mr. Sandler. How about on those occasions
7 when Mr. Sandler accompanied you, what type of business would
8 be carried on with the distillers?

9 A We would discuss the particular brands pervaded by that
10 distiller and the promotion of those brands.

11 Q And this would be to get ideas on promotion and display
12 and things of that type?

13 A That is right.

14 Q Now, are you familiar with a publication called the
15 Connecticut Beverage Journal?

16 A Yes, sir.

17 Q And that is the official trade publication of the liquor
18 business in the State of Connecticut?

19 A Yes, sir.

20 Q As far as you know?

21 A Yes, sir.

22 Q And from time to time do you prepare releases or copy to
23 be used by the trade journal with respect to changes in per-
24 sonnel in your operation?

25 A Yes, sir.

1 MR. MARROW: I would like to have this marked as General
2 Counsel's Exhibit 45 for identification.

(The document above-referred to was marked General Counsel's Exhibit 45 for identification.)

5 TRIAL EXAMINER: The document has been marked General
6 Counsel's 45 for identification.

7 MR. FEINGOLD: Can we have the date of that publication?

8 MR. MARROW: April, 1967.

9 Q (By Mr. Marrow) Mr. Lentz, I show you the April, 1967
10 issue of the Connecticut Beverage Journal Blue Book and ask
11 if you have seen that before?

12 A yes, sir.

13 Q And I direct your attention to Page 62 and ask you to
14 look at the photograph in the upper right-hand corner. Can
15 you identify and recollect that occasion?

16 A Yes sir

17 Q And that is yourself in the Hawaiian decoration in Mr.
18 Sandler on the left in that group?

19 A Yes sir.

20 Q And does --- Would you read the caption under the picture,
21 and I ask if that fairly represents the people there and their
22 titles?

23 MR. SOMEBS: I'm going to object to the question.

24 || TBTAL EXAMINER: Grounds?

25 MR. SOMEBS: First of all, I don't know if this witness

1 can testify to the titles of the other individuals in other
2 companies. He can only testify to what he is reading.

3 TRIAL EXAMINER: I think the witness may answer.

4 THE WITNESS: What are you asking me?

5 Q (By Mr. Marrow) Does the caption there fairly describe
6 the people in the picture?

7 A Describes the people and their titles, yes.

8 MR. MARROW: I would like to offer this in evidence. I
9 am a little concerned about how I can duplicate this.

10 TRIAL EXAMINER: I have one suggestion for you which may
11 or may not have the approval of all the other parties. I haven't
12 received it yet.

13 MR. MARROW: I am offering it.

14 MR. SOMERS: I am going to object. I question the pur-
15 pose of the offer.

16 TRIAL EXAMINER: Well, I haven't seen the document, but
17 I can surmise the purpose.

18 MR. SOMERS: I would like the Trial Examiner to examine
19 the picture.

20 TRIAL EXAMINER: Mr. Feingold?

21 MR. FEINGOLD: I have no objection.

22 TRIAL EXAMINER: I guess the record should show at this
23 time, I should have stated it earlier, that Mr. Adinolfi still
24 is not in attendance at the hearing because of personal prob-
25 lems. Mr. Somers, the only titles on this page that you were

1 referring to are those under the picture, the picture in the
2 upper right-hand corner.

3 MR. SOMERS: You mean Mr. Marrow?

4 TRIAL EXAMINER: I'm sorry, Mr. Marrow.

5 MR. MARROW: Yes.

6 TRIAL EXAMINER: Because there are two other pictures.
7 You haven't identified anything with respect to those photo-
8 graphs.

9 MR. MARROW: I haven't asked the witness but perhaps he
10 could identify them.

11 TRIAL EXAMINER: No, I just want to make the record clear.
12 I'm going to overrule the objection. The matter identified
13 will be received in evidence, and the suggestion I want to
14 make, Mr. Marrow, subject to objection of any other parties,
15 is the only thing I am receiving is this page which is Page 62
16 of the April, 1967 edition, and I suggest that you have two
17 copies made of that page and put those in evidence only.

18 MR. SOMERS: I may have further introduction, if I may.

19 TRIAL EXAMINER: All right.

20 MR. SOMERS: I do object. I think the whole booklet
21 should be offered because of the other pictures that do appear
22 and do contain salesmen of other companies.

23 TRIAL EXAMINER: Mr. Somers, under the circumstances I
24 am receiving as General Counsel's Exhibit only Page 62. I
25 will hear from you at any time during the course of the hearing.

1 as to any other specific parts of this book you think should be
2 received, but I am not going to take the whole book into
3 evidence, principally because I have no desire to sit down
4 and read this whole magazine.

5 MR. SOMERS: I think you would find it interesting.

6 TRIAL EXAMINER: I am sure I would, but I am not going to
7 take the responsibility. Page 62 of the document is received.

8 MR. FEINGOLD: I would like at least the text on Page 60.
9 which is part of the written material of this article, so that
10 the picture goes in its proper setting. I am not talking about
11 the other pictures that haven't been identified, but at least
12 the text of the occasion in which this picture was taken. It
13 is just one more page.

14 MR. SOMERS: I don't think this is a proper time for
15 counsel for Charging Party to offer something.

16 TRIAL EXAMINER: It's proper for him to suggest that. I
17 am not receiving a complete exhibit, but I don't see any reason
18 to take a description, Mr. Feingold.

19 MR. FEINGOLD: Well, I think the witness attended this
20 function, and this is the standard recognized journal in the
21 industry, and I think there was testimony about Mr. Lentz's
22 relations with Mr. Sandler and what they did. I think it be-
23 comes highly pertinent what they were doing on this occasion.
24 I do agree if it were a bulky exhibit.

25 THE WITNESS: Mr. Trial Examiner ---

1 TRIAL EXAMINER: Just a moment. Mr. Lentz, you can briefly
2 describe what was the occasion on which this picture was taken.

3 THE WITNESS: This was a meeting attended by all our sales-
4 men and the salesmen of other wholesale houses on the occasion
5 of the introduction of Leilani Rum into the State of Connecticut.

6 TRIAL EXAMINER: And the occasion was sponsored by whom?

7 THE WITNESS: Calvert Distillers.

8 TRIAL EXAMINER: Mr. Feingold, I am going to deny your
9 motion.

10 MR. FEINGOLD: I ask that that be put in the rejected
11 exhibit file and be marked for identification as ---

12 MR. SOMERS: I will withdraw the objection so that that
13 can go in. I don't think this is an objection upon which you
14 base your ruling.

15 TRIAL EXAMINER: All right, gentlemen, just to get this
16 particular point in. If Mr. Marrow will make available copies
17 of Pages 60, 61, 62, and 63, they are received as General
18 Counsel's Exhibit 45.

19 (The document above-referred to,
20 marked General Counsel's Exhibit
21 45, was received in evidence.)

22 Q (By Mr. Marrow) Now, with respect to Mr. Sandler's duties,
23 you stated yesterday that on occasion he would be assigned to
24 work with difficult retailers. Do you recall that testimony?
25 I believe it was yesterday. It may have been the day before.

A I don't remember my characterization of difficult retailers.

1 If there was a retailer that posed a problem to the regular
2 salesman, he might accompany the salesman in his visit.

3 Q Would the salesman go to Mr. Sandler and tell him he was
4 having some trouble with a particular account?

5 A Mostly he would come to me. Then I would direct Mr.
6 Sandler.

7 Q Are there occasion when they went directly to Mr. Sandler?

8 A Perhaps.

9 Q To express their difficulty?

10 A Perhaps.

11 Q Now, there were occasions when you have gone to Mr.
12 Sandler and told him to go help X or Y with a particular
13 account?

14 A Yes, sir.

15 Q And how would that transmission take place, I mean where?
16 Would you call Mr. Sandler into your office?

17 A I would go into the Sales Room and discuss it with him
18 and tell him to accompany the salesman.

19 Q And how often did you have discussions or meetings with
20 Mr. Sandler on general business?

21 A We often had discussions.

22 Q Would you get together with him at least every day?

23 A Not every day.

24 Q How often on a weekly basis?

25 A A few times a week.

1 Q Any particular specified occasions when you would get to-
2 gether?

3 A No.

4 Q You testified with respect to the sales meetings that are
5 conducted, periodically on the premises, do you recall that?

6 A Yes, sir.

7 Q And if I understand your testimony, these are normally
8 held on a Friday, perhaps not every Friday but on a Friday?

9 A Yes, sir.

10 Q How often on a monthly basis would you say you had these
11 meetings?

12 A Two or three times.

13 Q Now, prior to these sales meetings, would you get together
14 with Mr. Sandler and discuss the format of the meeting?

15 A I would either come together with him or give him a memo
16 on what I wanted covered at the meetings.

17 Q And in what form would this memo be?

18 A Written note.

19 Q That you would prepare and give to him in advance?

20 A Yes.

21 Q Did you ever --- Strike that. With respect to the format
22 itself, who would determine or how would it be determined what
23 items would be discussed at the particular sales meeting?

24 A I would determine it.

25 Q When would you make that determination?

1 A A day or two before the meeting.

2 Q And would you consult with Mr. Sandler in making this
3 determination as to what was to be covered?

4 A I would make the determination and direct him as to the
5 content of the meetings and format.

6 Q In what form did this direction occur?

7 A Either orally or by note.

8 Q With respect to the occasions when it was oral, would you
9 get together face to face with Mr. Sandler and discuss the
10 format?

11 A Right.

12 Q Whether in your office or perhaps at his desk?

13 A Usually in the Sales Office.

14 Q How long would these discussions last as a rule?

15 A Fifteen, twenty minutes.

16 Q How long did the sales meetings last?

17 A That varied.

18 Q Give us your best estimate if there was an average.

19 A Half an hour to two hours.

20 Q It could vary from half an hour to two hours?

21 A Yes.

22 Q Various matters would come up during these sales meetings?

23 A Yes.

24 Q And some of these matters would have been outlined or
25 set down on the format that you described?

1 A Some of them, yes.

2 Q Others might arise spontaneously at the meeting?

3 A Others would arise from the fact that the distillers par-
4 ticipated in the meetings, distillers' representatives.

5 Q Now, how often do these distiller meetings take place?

6 A Practically every time we had our own meeting.

7 Q So this might be a partial reason for having a sales
8 meeting was the fact that it coincided with a distillers'
9 meeting?

10 A Right.

11 Q Who arranged the distillers' meeting? In other words,
12 who contacted the distillers' representatives?

13 A They usually contacted me if they wanted a meeting.

14 Q Were there occasions when they contacted Mr. Sandler?

15 A Usually contacted me.

16 Q Were there occasions when they contacted Mr. Sandler?

17 A I couldn't give you specific occasions.

18 Q Might have been if it's not currently fresh in your mind.
19 any particular occasion, is that right?

20 A They contacted me. If I were out of the office, they
21 may have contacted him.

22 Q How often are you out of the office?

23 A Well, I frankly call on the retail trade and I am out of
24 the office at that time.

25 Q And that would be selling when you call on the trade or

1 just to see how things are going?

2 A Selling and promoting goodwill.

3 Q Do you take an order book with you when you go out?

4 A I always have one available, yes, sir.

5 Q And when you are calling on the trade, would you be call-
6 ing on what has been referred to as house accounts?

7 A Any accounts.

8 Q You might have called on accounts serviced by a salesman
9 as a part of his territory?

10 A Yes, sir.

11 Q Now, with respect to the sales meetings, could you des-
12 cribe for us the physical arrangement, how things were set up
13 in one of these meetings that was held, where would you be,
14 where would Mr. Sandler be, and where the other salesmen would
15 be.

16 A The salesmen would sit at their desks, and whoever was
17 addressing the meeting would stand at the podium or at the
18 bar in front of the salesmen.

19 Q And there were occasions when Mr. Sandler took his place
20 at the podium and make comments?

21 A And made comments as well as other salesmen.

22 Q On what occasion would other salesmen come to the podium?

23 A Occasionally other salesmen would be called upon to make
24 comments about the promotion of the brands or suggestions or
25 ideas on approaches.

1 Q And who would call on them?

2 A Myself or I might direct Mr. Sandler to do so.

3 Q When you say you might direct, in what form would that
4 direction occur?

5 A Orally.

6 Q You mean during the course of the meeting you would tell
7 Mr. Sandler ---

8 A Either that or it would be set up ahead of time.

9 Q When these were set up ahead of time, you and Mr. Sandler
10 would get together and prepare this format or procedure that
11 was to be followed at the meeting?

12 A We would get together or I would give him a note about it.

13 Q And this note was ample basis on which to prepare a meet-
14 ing, or did he have to do something in addition?

15 A Might give him an outline what I felt should be covered.

16 Q And he would follow that outline?

17 A Right.

18 Q Were there times that he ran meetings when you were not
19 present?

20 A I don't know whether you characterize it as running meet-
21 ings. He would participate in meetings and my father would
22 usually attend and participate or conduct them.

23 Q Were there times when both your father and yourself were
24 absent from sales meetings?

25 A Very infrequently.

1 Q But there were times, there were occasions?

2 A I couldn't give you specific instances. We always tried
3 to be at the meetings and I usually was.

4 Q In connection with the assistant that Mr. Sandler was
5 supposed to give the other salesmen, what form did that take?

6 A His physically being with the salesmen in the field and
7 calling the accounts with the salesmen.

8 Q He could go along with the salesman, perhaps giving them
9 a few pointers how he might improve his technique or method of
10 approach?

11 A Perhaps, yes.

12 Q What other functions might he do in that regard, physi-
13 cally?

14 A Maybe general assistance in helping the salesman. In
15 their contact with the accounts, principally it would be in
16 the area of two heads being better than one.

17 Q Now, most of the salesmen that you have had over the
18 years have been with you a number of years?

19 A Yes, sir.

20 Q Fairly experienced and knowledgeable?

21 A Yes, sir.

22 Q In soliciting and servicing your products and occasionally
23 you have hired new salesmen?

24 A Yes, sir.

25 Q What responsibility, if any, would Mr. Sandler have after

1 a new salesman is in your employ and out on the road, would he
2 accompany this new salesman?

3 A He might.

4 Q Wouldn't somebody else?

5 A Might be accompanied by the salesman who was being re-
6 placed.

7 Q I see. There might be a turnover or changeover?

8 A Yes.

9 Q Were there occasions though when a man was hired directly
10 and there was no successor and he had to cover the route
11 immediately?

12 A Not usually.

13 Q Can you recall any such occasion?

14 A No.

15 Q Well, in connection with the new salesmen as distinguished
16 from the experienced or veteran salesmen, what assistance and
17 responsibility did Mr. Sandler have?

18 A Well, we usually had a format of policy of instructions
19 that we would give to new salesmen conforming with our policies
20 and practices, and he might review those with the new salesman

21 Q Are these written down somewhere or is this an oral under-
22 standing?

23 A It is an oral understanding.

24 Q And Mr. Sandler was familiar with your policies and pro-
25 cedures?

1 A Right.

2 Q And it might be part of his responsibility to tell the
3 new salesmen what these policies and procedures were, what
4 was expected of them?

5 A Might help to familiarize them with them, yes.

6 Q Now, isn't it also true that Mr. Sandler would sit in the
7 interviews of new salesmen?

8 A Occasionally.

9 Q Now, in particular do you recall or know a salesman named
10 Deutsch?

11 A Yes.

12 Q Do you recall when Mr. Deutsch first came to work for the
13 company?

14 A Yes.

15 Q That was in January just about a year ago, perhaps a little
16 over a year ago?

17 A Yes.

18 Q Do you recall that Mr. Sandler sat in and participated in
19 the initial interview?

20 A Yes, he sat in at that time. He had known Mr. Deutsch
21 before. He worked for the Schenley House.

22 Q As a matter of fact, Mr. Sandler recommended Mr. Deutsch
23 to the company, didn't he?

24 A I don't recall whether he recommended him or not. I don't
25 recall that, sir.

1 Q But Mr. Deutsch was hired?

2 A Yes.

3 Q And is presently working and has been working for the
4 company?

5 A Right.

6 Q Do you recall Mr. Sandler being present during the inter-
7 views or the times when you were discussing with Mr. Deutsch --

8 A Some of the interviews. yes.

9 Q How many interviews did he have?

10 A Two or three.

11 Q What happened at each of these interviews?

12 A We would discuss his background, and I would ask Mr.
13 Deutsch questions about his handling of his duties in the past
14 in the promotion of the brands and observe his demeanor, lis-
15 ten to his questions, and evaluate the man before making a
16 decision on his employment.

17 Q Now, on these occasions when Mr. Sandler was present,
18 perhaps not limiting yourself to Mr. Deutsch, would he con-
19 tribute or assist in any way in the interview or make comments
20 afterward of what he thought of the individual?

21 MR. SOMERS: Are we talking about a specific occasion?

22 MR. MARROW: Not necessarily limiting the testimony to
23 Mr. Deutsch.

24 MR. SOMERS: I don't think there is any testimony that
25 Mr. Sandler sat in on any other interviews.

1 THE WITNESS: We are talking about Mr. Deutsch.

2 Q (By Mr. Marrow) Let's limit ourselves to Mr. Deutsch.

3 Did Mr. Sandler contribute in any way to the discussion?

4 A No, I did most of the talking, Deutsch and I.

5 Q Prior to your talking to Mr. Deutsch, didn't Mr. Sandler
6 tell you about his background and experience, what he thought
7 of him?

8 A As I recall, he knew that he was with the Schenley Dis-
9 tributors, a good distributor. I don't know to what extent
10 he knew much about the man himself.

11 Q How about after Mr. Deutsch came with the company and was
12 working for you, did you have occasion to ask Mr. Sandler how
13 he was doing to follow up your original thinking in hiring
14 him?

15 A I didn't ask Mr. Sandler. I could look at the sales
16 records myself and I did.

17 Q And this is the only thing that you look at when you judge
18 a salesman, his sales?

19 A We had sales control on the performance of a man in com-
20 parison to previous periods, and it is a pretty good criteria.

21 Q You indicated that you were concerned with demeanor. I
22 take it by demeanor you mean his physical characteristics and
23 appearance?

24 A During an interview, yes.

25 Q But after the interview, you wouldn't be concerned with

1 how he conducted himself in a customer's ---

2 MR. SOMERS: Objection.

3 THE WITNESS: Well, I could only ---

4 TRIAL EXAMINER: Just a moment. Overruled.

5 THE WITNESS: Well, yes, I would be concerned.

6 Q (By Mr. Marrow) You would discuss this with Mr. Sandler
7 as to how he conducted himself?

8 A If he worked with the man, yes.

9 Q Wasn't it your testimony that he worked with the salesman,
10 assisted him?

11 A Well, yes, in instances where he had worked with the man,
12 yes, I would ask him.

13 Q And you relied on his opinion and judgment?

14 A In conjunction with other information that I might receive,
15 yes.

16 Q Now, with respect to --- Just to go back for a moment.

17 The financial arrangement that Mr. Sandler had, I think we got
18 up to the point of vacations. Did he also get other allowances
19 that some of the other salesmen did not receive?

20 A He had a limited expense account which other salesmen,
21 which some of the other salesmen had also.

22 Q How did his compare with the other salesmen who had these
23 expense accounts?

24 A May have been a little higher.

25 Q Did he have any other allowances that you recall?

1 A No, sir.

2 Q Was he allowed anything for the use of his automobile?

3 A I don't believe so.

4 Q You don't believe so or you don't know?

5 A I don't believe so.

6 Q Now, you testified with respect to the establishment of
7 quotas, and as I understood your testimony you were the one
8 who set the overall figure for the House, is that right?

9 A Myself and occasionally in important drives I would con-
10 sult with my father and Stanley Goldstein.

11 Q Did Mr. Sandler ever assist in the setting of the overall
12 quota?

13 A Usually the overall quota was given to him.

14 Q Did he ever assist in establishing it to your recollection?

15 A Only in regard to giving us some information from the
16 files about previous experience in that particular brand.

17 Q You would send him to the files to look up some figures?

18 A Right.

19 Q And that is the only assistance that he gave in respect
20 to establishing quotas?

21 A Yes.

22 Q Now, you said that you gave something to Sandler after it
23 was computed, this overall quota, is that right?

24 A I don't recall that.

25 Q Well, after you set the figure for the House, what happened

1 to that figure?

2 A He would apply a formula to arrive at the individual sales-
3 man's quota.

4 Q How would he get it? How would he get the figure in the
5 first instance?

6 A From experience. It was ascertained what percentage of
7 the overall quota was sold by each individual man on a speci-
8 fied brand. He would apply that --- When I set the overall
9 quota, he would apply that specific percentage as a proportion
10 of the overall quota and give that figure to the salesman,
11 give that figure to the individual salesman.

12 Q Well, going back, I assume that some thinking or mental
13 processes are involved in your deciding what this overall
14 figure will be?

15 A Right.

16 Q Now, you have arrived at this figure and it's in your
17 mind or perhaps it's on paper, I don't know. How does that
18 get to Mr. Sandler? Do you call him in and discuss it with
19 him or review it with him, or does he know what your thinking
20 processes are?

21 A Sit with him and direct him on what the figures should be
22 to set down on the quota sheet.

23 Q This is after you have made the determination as to what
24 the overall figure is?

25 A Right.

1 Q And the two of you are together at the office somewhere
2 and reviewing this figure, and then you direct Mr. Sandler
3 as to what the figure should be for each salesman?

4 A No, I didn't say that. I said I would set the overall
5 figure for the House on each specific brand, and each individ-
6 dual salesman's quota could be broken down according to a
7 specific formula which could have been done by any man.

8 Q Let me make sure I understand you. You carry a number of
9 different products that you sell?

10 A Right.

11 Q Let's take one product as an example. I don't know the
12 names of the particular products. Let's say Brand X. Do you
13 in your mind fix a figure what sales you expect for the next
14 month for Brand X?

15 A Right.

16 Q Let's say that is a certain dollar amount.

17 A Case amount.

18 Q I'm sorry. That is what is confusing. This would be
19 cases rather than dollars?

20 A Right.

21 Q You would tell Mr. Sandler what your figure was for that
22 particular brand, what you expected to do in terms of case
23 volume per month in Brand X?

24 A I would tell Mr. Sandler or I would tell the Administra-
25 tive Assistant and he could break it down as easily as Mr.

1 Sandler.

2 Q Limiting the testimony to what Mr. Sandler did, you would
3 give him this figure?

4 A Right.

5 Q Would you give it just for this one product or all pro-
6 ducts at once?

7 A Several products, give it to him on several products.

8 Q Would this be done over a period of time or is there a
9 particular day when this was handled?

10 A Sometimes close to the beginning of the month, prior to
11 the beginning of the month, set the quotas at the beginning of
12 the month.

13 Q Either Mr. Sandler or the Administrative Assistant had
14 these quotas or figures?

15 A Right.

16 Q And then in turn they communicate with the salesmen
17 individually and tell them?

18 A No, it is all put down on a specific sheet for each sales-
19 man so that each salesman would know what his quota was on the
20 specific brand for that particular month.

21 Q Who put it on the sheet?

22 A The Administrative Assistant usually.

23 Q How about Mr. Sandler?

24 A He might do it.

25 Q In turn this individual sheet would go to the particular

1 salesman whose name appeared on the sheet?

2 A Right.

3 Q Now, during the month would there be spot checks made to
4 see how these quotas were coming along?

5 A Yes.

6 Q And wouldn't Mr. Sandler make those spot checks?

7 A The figures were put on a weekly sheet, might have been
8 done weekly or every two weeks, and a comparison figure for
9 a certain number of selling days for the same number of sell-
10 ing days for the previous year, the same month the previous
11 year, we would compare the man's progress.

12 Q Who is we?

13 A Myself, occasionally Sandler at my direction.

14 Q When you say occasionally, how often is occasionally?

15 A I couldn't give you a definite answer. Sometimes the
16 figures were reviewed with the men and sometimes the sheet
17 was given to the men so they could review themselves without
18 the company men and myself.

19 Q So there may have been occasions when Mr. Sandler reviewed
20 these sheets that you are not familiar with?

21 A I am familiar with everything that he did.

22 Q Well, did he or didn't he?

23 A The sheets were made out in such a way that a man could
24 understand what the sheet related to without having anyone
25 explain it to him. This is part of the sales control.

1 Q But I assume there were occasions when you were dissatis-
2 fied with the particular results of a salesman or the salesmen
3 during a period of time?

4 A Yes.

5 Q On those occasions wouldn't you review the man's sheet
6 with him directly, either you yourself or Mr. Sandler?

7 A We were dissatisfied?

8 Q Yes.

9 A Yes. Mr. Sandler would do it at my direction.

10 Q How would you give him that direction, call him in and
11 say I want you to do this?

12 A There were copies made of each weekly sheet, comparisons
13 I would receive copies of those sheets and review them. If
14 there were instances where the man was to be reminded about
15 sales on a particular brand, then I would direct Mr. Sandler
16 to talk to the man.

17 Q And how would you give this direction, by memo or face-to-
18 face confrontation?

19 MR. SOMERS: Objection. What is the relevance as to how
20 Mr. Sandler is directed, whether it is written or oral.

21 TRIAL EXAMINER: Overruled.

22 THE WITNESS: We go into the Sales Room and if the sales-
23 man was present or I could reach him, I would contact the man
24 myself and review it with him. If not, then I would tell
25 Sandler to do so, at my direction.

1 Q (By Mr. Marrow) But Sandler would do it?

2 A At my direction, yes.

3 Q But he would do it?

4 TRIAL EXAMINER: The witness answered yes.

5 Q (By Mr. Marrow) Now, were there occasions when the sales-
6 men voiced or complained about the amount of their quotas?

7 MR. SOMERS: Is this an appropriate breaking point?

8 TRIAL EXAMINER: Would you answer the question, please?

9 THE WITNESS: Very infrequently. Yes, it could occur.

10 Q (By Mr. Marrow) And they took those complaints up with
11 Mr. Sandler?

12 A I don't know. The only thing that I can testify to are
13 complaints that were transmitted to me or given to me by the
14 men themselves.

15 Q They came directly to you?

16 A I know that they did, yes.

17 Q And you are not sure or you don't know whether they went
18 to Mr. Sandler in this area?

19 A No.

20 TRIAL EXAMINER: Off the record.

21 (Discussion off the record.)

22 TRIAL EXAMINER: On the record.

23 Gentlemen, Mr. Somers has requested that I adjourn now
24 because of an appointment he has, and Mr. Feingold has request-
25 ed that I not set a return until at least one-thirty because

1 of an appointment he has, and Mr. Marrow states he has no
2 problems at all in this respect. We will be in recess until
3 one-thirty.

4 (Whereupon, at 11:30 a.m., the hearing was recessed
5 until 1:30 p.m., the same day.)

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AFTERNOON SESSION

(1:30 o'clock p.m.)

3 TRIAL EXAMINER: On the record. Mr. Marrow, proceed.

4 Q (By Mr. Marrow) And this was in connection with the
5 assignment of quotas, the last discussion that we had?6 TRIAL EXAMINER: Mr. Marrow, will you rephrase that
7 question.

8 THE WITNESS: I understand it.

9 TRIAL EXAMINER: I think I prefer to have it rephrased.

10 Q (By Mr. Marrow) When we broke for lunch, Mr. Lentz, you
11 understand that we were discussing the assignment of quotas
12 to the salesmen?13 A Yes, sir. I can't think of any specific instances where
14 there was a complaint about assignment of quotas. The subject
15 may have come up at a meeting in which we were discussing a
16 particular brand, and the general area of the quotas was dis-
17 cussed.18 Q Now, in connection with the quota determined at the out-
19 set, what part if any does the distillery itself play in deter-
20 mining the quota?

21 MR. SOMERS: Objection. I don't see the relevancy of that.

22 TRIAL EXAMINER: I'm going to overrule the objection on
23 the basis of it seems to be a preliminary question.24 THE WITNESS: They don't have any control over the ulti-
25 mate quota that is given to the men. The quota that I set up

1 for the House, the entire House may have a bearing on a figure
2 that they are seeking, the distillery is seeking for us to
3 attain.

4 Q (By Mr. Marrow) But there would be some communication
5 with the distillers over the course of time with respect to
6 their needs and with respect to sales?

7 A They would communicate that to us, to me, yes.

8 Q Wouldn't Mr. Sandler participate in those discussions or
9 communications with the distillers?

10 A It wouldn't be a matter of discussion. It would be a
11 matter of communication.

12 Q But he might be the recipient of the distiller's figures
13 or quotas for a particular period. Wouldn't that be given to
14 Mr. Sandler by the distillers?

15 A It would be given to me. He might have access to it.

16 Q Is it your testimony that at no time was Mr. Sandler
17 given direct information from the distillers as to what their
18 quotas were for particular periods?

19 A Might be he might receive a copy of a communication that
20 was sent to me.

21 Q The original would go to you and a copy to Mr. Sandler?

22 A Yes.

23 Q Now, I believe we asked earlier if the company was able
24 to produce a copy of Mr. Sandler's contract.

25 MR. SOMERS: We have searched our files and we do not have

1 a copy.

2 Q (By Mr. Marrow) Now, I would like to direct your attention to Mr. Amoroso for a moment. Do you recall when he was first hired by the company?

3 A Approximately four years, five years.

4 MR. FEINGOLD: Excuse me, what was that answer?

5 THE WITNESS: Approximately four or five years.

6 Q (By Mr. Marrow) And you are speaking in relation to today's date?

7 A Yes, sir.

8 Q And do you recall participating in the conversations or discussions with Mr. Amoroso when he was first hired?

9 A Yes, sir.

10 Q And what was his background, if you recall?

11 A He had been with the Canada Dry Corporation or a distributor of Canada Dry products and had a limited knowledge of wines at that time. However, he had experience in working with salesmen and in promoting products to the retail trade.

12 Q And what position were you looking to fill when you hired Mr. Sandler?

13 A Mr. Sandler or Mr. Amoroso?

14 Q I'm sorry, Mr. Amoroso.

15 A Senior wine salesman and ultimately a wine specialist.

16 Q Had there been such a position in the company prior to Mr. Amoroso's hiring?

1 A A similar position, yes.

2 Q Who occupied that position?

3 A A man by the name of Arthur Levine.

4 Q Do you recall what arrangements there were as far as
5 financial remuneration with Amoroso at the time he was hired?

6 A Salary.

7 Q Any other arrangement?

8 A There too the salary, the determination of the salary
9 had a relation to what he was expected to sell in the trade.

10 MR. FEINGOLD: I'm going to object to the answer as not
11 responsive.

12 TRIAL EXAMINER: That answer was not responsive. I will
13 strike it. The question was what other arrangements did you
14 have with Mr. Amoroso other than the fact that he would be
15 on salary.

16 THE WITNESS: That he would receive the fringe benefits
17 that the other wine salesmen had.

18 Q (By Mr. Marrow) Anything else?

19 A That would be it. He received a nominal expense account
20 because he handled wine tastings several times a week.

21 Q And was this right after he started working with the
22 company that he went into that?

23 A Well, when he started working with the company he didn't
24 have the expertise or the knowledge of wines that he has now
25 so that the amount of expenses when he started was not what it

1 is now.

2 Q Now, do you recall that Mr. Amoroso went to a wine school
3 in New York?

4 A That is right.

5 Q And for how long a period was that?

6 A I believe a month.

7 Q Was this in connection with his anticipated duties as a
8 wine specialist?

9 A Right.

10 Q Have any of your other wine salesmen attended that school?

11 A No, not that particular course. Others have been exposed
12 to other wine courses.

13 Q Of that long a duration?

14 A Well, these were in the nature of correspondence courses.

15 Q Now, do you recall at the time Mr. Amoroso was hired any
16 press releases to the beverage media?

17 A There probably was.

18 Q I think you have already told us that you are familiar
19 with the Connecticut Beverage Journal Blue Book?

20 A Yes.

21 MR. MARROW: I would like to have this marked as General
22 Counsel's Exhibit 46 for identification.

23 (The document above-referred to
24 was marked General Counsel's
Exhibit 46 for identification.)

25 MR. MARROW: This is the October, 1964 edition.

1 Q (By Mr. Marrow) Mr. Lentz, I show you the October, 1964
2 Beverage Journal which has been marked General Counsel's
3 Exhibit 46 for identification and direct your attention to
4 Page 164 and ask you to read this article on the right-hand
5 side.

6 A Yes.

7 Q And does that article accurately reflect the hiring and
8 title of Mr. Amoroso as of October, 1964?

9 A It reflected the hiring and the title, right.

10 Q And the contents of the article are otherwise accurate
11 and correct?

12 A This article reflects that he was associated with the
13 industry for many years, which is not accurate.

14 Q What is the inaccuracy?

15 A He hadn't been associated with our industry.

16 Q When they say the "industry," are they referring to the
17 liquor industry or the beverage industry?

18 A This refers to the wine or liquor industry, and it's not
19 accurate in that respect.

20 Q Isn't Canada Dry also in the liquor business?

21 A He was not in that area at all. He was in the soft bever-
22 age area.

23 MR. MARROW: Well, I would like to offer this article.

24 TRIAL EXAMINER: How much of it?

25 MR. MARROW: Just two paragraphs. Perhaps it could be

1 read into the record.

2 TRIAL EXAMINER: Before we get to that point, Mr. Somers,
3 do you have any objection?

4 MR. SOMERS: I have an objection. I don't know who wrote
5 that article.

6 TRIAL EXAMINER: Well, do you have any other objection?

7 MR. SOMERS: No other objection.

8 MR. FEINGOLD: No objection.

9 TRIAL EXAMINER: With respect to who wrote the article,
10 the witness' testimony as I got it was that at least certain
11 parts of what the General Counsel was referring to or maybe
12 all was correct except in one particular respect. So if the
13 witness has attested to the accuracy of the material, it doesn't
14 make any difference who wrote it.

15 Let me have that a moment. Which are the two paragraphs?

16 MR. MARROW: Where it begins, "Named a wine manager."

17 TRIAL EXAMINER: Were those the two paragraphs that you
18 read?

19 THE WITNESS: Yes, sir.

20 TRIAL EXAMINER: And you have pointed out the only in-
21 accuracy that you saw in the two paragraphs?

22 THE WITNESS: Yes, sir.

23 TRIAL EXAMINER: The rest, as far as you are concerned, is
24 accurate?

25 THE WITNESS: Yes, sir.

1 MR. SOMERS: I also question the purpose.

2 TRIAL EXAMINER: The purpose seems to be plain to me. I
3 am not passing on whether or not General Counsel is successful.
4 He is offering it for a certain relevant and material purpose.

5 MR. SOMERS: All right.

6 TRIAL EXAMINER: I am going to have the witness read into
7 the record the material from this document that he referred
8 to. I think that would be the better practice.

9 First, let's make sure the date is correct. This is in
10 an issue of the Connecticut Beverage Journal Blue Book for
11 October, 1964, is this correct, Mr. Lentz?

12 THE WITNESS: Yes, sir.

13 TRIAL EXAMINER: Will you read the two paragraphs to
14 which you referred?

15 THE WITNESS: The entire two paragraphs?

16 TRIAL EXAMINER: Yes.

17 THE WITNESS: "Announcement has been made by Mervyn Lentz,
18 Vice-President of Brescome Distributors Corporation, that Frank
19 Amoroso has been named wine sales manager. Mr. Amoroso, who
20 has been associated with the industry for many years, has
21 resigned his position as representative for the Canada Dry
22 Corporation in Fairfield County to accept his new position.
23 Frank takes over the position held by Arthur Levine, who is
24 joining his father in the retail liquor business in New York."

25 TRIAL EXAMINER: Mr. Marrow, you agree that is the total

1 that you were offering in evidence?

2 MR. MARROW: Yes, sir.

3 TRIAL EXAMINER: All right. I will receive that offer.

4 (The document above-referred to,
5 marked General Counsel's Exhibit
6 46, was received in evidence and
7 read into the record.)

8 C (By Mr. Marrow) Now, following Mr. Amoroso's attendance
9 at the wine school, did he return to Brescome and then go on
10 the road selling and setting up wine tastings, that type of
11 thing?

12 A He was working at Brescome at the same time he attended
13 the courses.

14 C Was he commuting back and forth?

15 A The courses took place on Monday evening in New York.

16 Q Only one night a week type of school?

17 A Right.

18 Q Now, during the period of time that Mr. Amoroso has been
19 with the company, has his salary increased?

20 A What period are you referring to?

21 Q October, 1964 to July, 1967?

22 A No.

23 Q Remained the same?

24 A Yes, sir.

25 Q And in addition to his salary, did Mr. Amoroso receive
any other compensation?

1 A I believe I referred to it before. He received a nominal
2 expense account.

3 Q How about any bonus?

4 A He received a bonus at the end of the year as well as the
5 other men.

6 Q The other men received a bonus, too?

7 A Yes, sir.

8 Q You say the other men, the other salesmen or the wine
9 salesmen?

10 A Both.

11 Q And how did his bonus compare monetarily with the other
12 wine salesmen's bonuses?

13 MR. SOMERS: Objection.

14 TRIAL EXAMINER: What basis?

15 MR. SOMERS: I think we should know more about the bonus
16 first of all, and I don't think we are being specific enough
17 for what year, for what period of time.

18 TRIAL EXAMINER: Well, I think the latter is a good
19 point. I will limit the question to 1967 and I will overrule
20 the objection otherwise.

21 MR. MARROW: Well perhaps I could rephrase and save some
22 time.

23 Q (By Mr. Marrow) Has Mr. Amoroso received a bonus every
24 year since 1964 at Christmas time?

25 A Yes.

1 Q And had the other wine salesmen also received a bonus
2 every year?

3 A Yes.

4 Q With respect to the bonus, what was the basis of deter-
5 mination on which they were paid?

6 A In relation to time spent on the job and consideration to
7 the company.

8 Q That is how everybody's bonus is figured or just Mr.
9 Amoroso's?

10 A Everyone's.

11 Q Now in terms of dollars and cents, how did his bonus
12 compare with the other wine salesmen's during this period?

13 A A little higher.

14 Q How much is a little higher?

15 MR. SOMERS: Objection.

16 TRIAL EXAMINER: This creates a bit of a problem for me.
17 Do you mean by a little higher in amount --- We are dealing
18 in vague words.

19 MR. SOMERS: Mr. Trial Examiner ---

20 TRIAL EXAMINER: Yes.

21 MR. SOMERS: This is a term of employment which is a
22 bonus type arrangement as I understand bonus arrangements, or
23 this particular one is strictly discretionary with the company.
24 I don't see the relevancy to the relationship of Mr. Amoroso's
25 bonus to other salesmen's bonuses.

1 TRIAL EXAMINER: The Board has for a long number of years
2 considered as a factor, perhaps in given circumstances of small
3 weight and in other circumstances of greater weight, the dif-
4 ference between the compensation and the benefits of parties,
5 employees in determining whether one is a supervisor or isn't.
6 Now, if Mr. Amoroso received a bonus substantially larger than
7 the other wine salesmen, I think that is a relevant factor.

8 MR. SOMERS: Can be relevant of how he performed his
9 functions as compared to the other wine salesmen. In other
10 words, I don't see any weight can be given without a detail
11 description of the performance ---

12 TRIAL EXAMINER: Let me find out how much the difference
13 was, if there was any of any consequence, and that may be a
14 point for cross-examination.

15 Now, I don't want to compel the disclosure of information
16 that the company would rather not disclose if it can be arrived
17 at at some other way. Now, the witness has stated that it was
18 a little higher. I don't know what he means by a little. I
19 have in the past taken his testimony that certain compensation
20 was substantially different. I guess that leaves me in the same
21 problem, Mr. Lentz. Can you describe the differential between
22 the two as between the bonus given the wine salesmen and the
23 bonus given Mr. Amoroso in some other way?

24 MR. FEINGOLD: I think we ought to have the dollar amount
25 because the Board has always gone into the dollar amount, and

1 there is no better way than arithmetic. I don't think it's
2 become confidential anymore for the purpose this hearing.

3 TRIAL EXAMINER: As a Hearing Officer in representation
4 cases for a large number of years, I always managed to avoid
5 this particular problem. I am going to try it again.

6 Can you describe the differential?

7 THE WITNESS: I would like to give you the differential
8 and the reason for it.

9 TRIAL EXAMINER: You may do it.

10 THE WITNESS: The differential probably is between 150
11 and \$200. Since Mr. Amoroso's position as a wine specialist
12 is to help promote wines to the consumer and has spent time
13 as such in wine tastings and has spent far greater time than
14 the other wine salesmen, then he in our estimation deserves
15 more compensation.

16 MR. FEINGOLD: I say that the \$200 differential doesn't
17 mean anything unless you know the basis. If it is \$200 over
18 \$210, it's one thing; if it is \$200 over 25 hundred dollars,
19 then it is insignificant. That is why I say the best evidence
20 is the arithmetical numbers.

21 TRIAL EXAMINER: We will proceed, Mr. Feingold. There
22 are a number of different ways to General Counsel and yourself
23 to pursue this, if you wish.

24 Q (By Mr. Marrow) Were these bonuses paid at a particular
25 time of the year?

1 A Christmas.

2 Q Incidentally, was there a party or some kind of occasion
3 when everybody got together at Christmas where these bonuses
4 were passed out?

5 MR. SOMERS: Objection. What difference does it make
6 where these were passed out?

7 MR. MARROW: Preliminary.

8 TRIAL EXAMINER: Overruled.

9 THE WITNESS: Usually I had a meeting at which I gave out
10 bonuses to everyone.

11 Q (By Mr. Marrow) Were all the employees present at these
12 meetings?

13 A Most of them.

14 Q Were the truck drivers there?

15 A Those that were drivers and warehousemen who were present
16 at the premises at the time. Usually most of the drivers were
17 in the field.

18 Q Most or all of the liquor and wine salesmen would be
19 present?

20 A Yes, sir.

21 Q Now, with respect ---

22 TRIAL EXAMINER: Just a moment, Mr. Marrow. Was it
23 generally known among the employees what each of them got as
24 a bonus?

25 THE WITNESS: No.

1 TRIAL EXAMINER: You mean it was announced or made public
2 at these meetings?

3 THE WITNESS: No.

4 TRIAL EXAMINER: All right. Go ahead.

5 MR. SOMERS: I want the record to reflect that the General
6 Counsel appears to be conducting cross-examination for both
7 the attorney for the Charging Party for the General Counsel as
8 to these matters.

9 MR. MARROW: This will help speed things up.

10 MR. FEINGOLD: Let the record so state.

11 TRIAL EXAMINER: Gentlemen, I am not going to spend any
12 time on that particular problem. Mr. Feingold and Mr. Somers
13 have frequently conferred ---

14 MR. SOMERS: Excuse me. I don't believe I conferred with
15 counsel for the Charging Party.

16 TRIAL EXAMINER: Did I say Mr. Somers?

17 MR. SOMERS: Yes.

18 TRIAL EXAMINER: I saw a movie with respect to Mr. Freud
19 the other night. It may have affected me. Mr. Feingold and
20 Mr. Marrow have frequently conferred, and I think you will
21 agree, Mr. Somers, on occasion you and Mr. Adinolfi have con-
22 ferred. I don't see anything wrong in this. And I hope there
23 will be no more Freudian slips on my part.

24 Q (By Mr. Marrow) With respect to salary, you indicated
25 that Mr. Amoroso had a fixed salary. Was he under a contractual

1 agreement with the company?

2 A No, sir.

3 Q And what was the relative --- What was the relationship
4 between his salary and the other wine salesmen's over this
5 period, 1964 to 1967?

6 MR. SOMERS: I am going to object. I don't understand
7 the question.

8 TRIAL EXAMINER: Do you understand it, Mr. Lentz?

9 THE WITNESS: Yes.

10 TRIAL EXAMINER: If you understand it, you may answer
11 it.

12 THE WITNESS: About \$75 more a week.

13 Q (By Mr. Marrow) Now, at the time that Mr. Amoroso came
14 to work for you, were there other men exclusively selling wines
15 as distinguished from liquor?

16 A When?

17 Q In October, 1964 when Mr. Amoroso first came with the
18 company?

19 A Yes.

20 Q Do you recall who they were?

21 A Al Cohen, Bruno Golaski, I believe Al Paul.

22 Q Mr. Paul is now a liquor salesman?

23 A Yes, sir.

24 Q And have you hired any additional wine salesmen?

25 A No, sir.

1 Q So that ---

2 A Just have been replacements, no additions.

3 Q Have you hired some replacements?

4 A Mr. Sameloff replaced another man.

5 Q So that at the present time you have Mr. Sameloff, Mr.
6 Golaski, and Mr. Cohen?

7 A And Mr. Amoroso.

8 Q And Mr. Amoroso. Do you know if Mr. Sameloff participated
9 in the interviews with --- Strike that. Do you know if Mr.
10 Amoroso participated in the interviews when Mr. Sameloff was
11 hired?

12 A I don't recall.

13 Q Do you know what if anything Mr. Amoroso did with Mr.
14 Sameloff after he was hired with respect to breaking him in
15 and showing him the operation?

16 A There wasn't much breaking in needed as far as Sameloff
17 was concerned because he had been working with a wine house
18 prior to his employment with us and in the same area.

19 Q Did Mr. Amoroso accompany him at the beginning to show
20 him what his route was?

21 A Accompanied him no more no less than he did with other
22 men, other wine salesmen.

23 Q When you say no more no less, what is the relationship
24 or percentage of time he spent with the other wine salesmen?

25 A It's hard to differentiate the time. He is in the field

1 all the time, either with his own accounts or with the wine
2 men.

3 Q This is Monday through Friday?

4 A Yes, sir.

5 Q Is he ever in the office?

6 A Seldom.

7 Q And this is true of the wine men?

8 A Yes, sir.

9 Q Do they attend the sales meetings?

10 A Some of them, some of the meetings.

11 Q And that would be only when they relate to wine or wine
12 products?

13 A Or something that we wanted to relate to the entire sales
14 force, yes.

15 Q Now, with respect to these wine tastings, this in recent
16 years has become a relatively big item, has it not, for liquor
17 distributors?

18 A Yes, sir. I wouldn't say for liquor distributors. It
19 has been for us.

20 Q And what has been Mr. Amoroso's participation in that
21 area?

22 A He has spent a considerable amount of time on wine tast-
23 ings.

24 Q And has he helped the other wine salesmen in setting up
25 these, how to give a wine tasting?

1 A They have been giving wine tastings also, and some of them
2 had been giving wine tastings before their employment with us.

3 Q Does Mr. Amoroso instruct the other salesmen in the wine
4 tasting procedure and operation as he instructs them?

5 A I wouldn't say instructs, he might assist them. Most of
6 them have had experience in wine tastings before.

7 Q What is the form of assistance that he gives?

8 A He might accompany them and assist in a particular wine
9 tasting events.

10 Q He would be there physically while the other fellow was
11 running the wine tasting?

12 A Yes, sir.

13 Q And what would be his participation, if any?

14 A Help them in distributing the wine and pouring the wine
15 and disseminating information and booklets and so forth, which
16 are part of a wine tasting event.

17 Q Part of this wine tasting is then explanation, is it not,
18 by the demonstrator as to the quality of each wine and how it
19 is served and used?

20 A Yes.

21 Q And this requires someone who can get up in front of a
22 group and address the group and explain these areas, various
23 matters?

24 A To some extent, yes.

25 Q This would be to a large extent part of Mr. Amoroso's

1 function, is it not?

2 A Yes, but as I said it is not solely his job. The others
3 also conduct them.

4 Q Your testimony yesterday was that the others did it but to
5 a lesser degree.

6 A Yes, sir.

7 Q Now, the cuotas with respect to the wine department, if
8 I may use that term, are they similar in the basic setup to
9 the liquor; in other words, it's by a case system?

10 A Yes, sir.

11 Q And are these figures set up by yourself initially?

12 A The overall figure, yes.

13 Q And then who breaks the figure down?

14 A It is figured on a similar formula to that used for the
15 liquor men.

16 Q Yes, but who physically does the breaking down?

17 A Either Frank or the sales secretary in the office.

18 Q So the sales secretary would work with both Amoroso and
19 Sandler?

20 A Yes, sir.

21 TRIAL EXAMINER: When you are talking about sales secre-
22 tary, we are talking about the same person as we referred to as
23 the Administrative Assistant?

24 THE WITNESS: Yes, sir.

25 Q (By Mr. Marrow) Now, with respect to the assignment of

1 accounts, when new accounts --- I am talking now of wine
2 accounts. When new accounts come in, how is the company noti-
3 fied of this? I have heard some testimony.

4 A A list is sent by our association, the Wine and Spirit
5 Wholesalers of Connecticut, of new applications and new per-
6 mits issued in our area.

7 Q And is this on a periodic basis or as they occur?

8 A On a periodic basis.

9 Q Does this come out every week or only when permits are
10 issued?

11 A I really couldn't tell you what intervals.

12 C And how do they get into your office, through the mail?

13 A Yes, sir.

14 C And who receives copies of these?

15 A I do.

16 Q You are the only one?

17 A Yes, sir.

18 Q And do you distribute your copies to Amoroso and Sandler?

19 A I would look it over and determine what areas were in in-
20 volved in the new permit and relate to Amoroso or Sandler or the
21 particular man involved that they were to call on the account,
22 and I notify the office, the inside office of the same thing.
23 Usually it's an automatic thing because they would be assigned
24 an account in the particular area that they covered.

25 Q Now, when you say automatic, is this true of the Hartford

1 City Area as well?

2 A Well, in areas in which several men cover, they are dis-
3 tributed on an equitable basis. I would indicate who I felt
4 should receive the account and have them be assigned it.

5 Q And you testified that you do this on some equitable
6 arrangement. Do you discuss the arrangement with Sandler or
7 Amoroso before you make your ultimate decision?

8 A Not always.

9 Q On occasion?

10 A Sometimes, occasionally.

11 Q And they would make their comments?

12 A Yes.

13 Q And are there occasions when you are not in the office
14 when these lists or sheets come in and are distributed to
15 either Sandler or Amoroso directly?

16 A No.

17 Q That never happens?

18 A If I am not in the office, I will receive them and make
19 note of them when I'm in the office.

20 Q Haven't there been occasions when you have been away for
21 some period of time?

22 A No account has been assigned to any man in any department
23 without my direction.

24 MR. FEINGOLD: I move to strike that out as not responsive.

25 THE WITNESS: Yes, there have been times when I have been

1 out of the office, but there has been no assignment of an account
2 until I returned.

3 TRIAL EXAMINER: Motion to strike the comment is denied.

4 Q (By Mr. Marrow) Now, there has been some testimony about
5 an Oakwood Account and Mr. Leahy. Do you recall reference being
6 made to that particular account?

7 A Yes, sir.

8 Q Do you recall when the assignment was made or how it was
9 made?

10 A I don't recall in detail except that the account was
11 originally assigned to another man, and it was brought to my
12 attention that Joe Leahy had contacted the account before that
13 time and had an account which was contiguous to it, right next
14 door. We changed the account to Leahy's.

15 Q And you participated in that transfer?

16 A Yes, sir.

17 Q Did Mr. Sandler come to you and tell you that he had made
18 the transfer and then you approved it?

19 A I don't recall the sequence of events.

20 Q It is possible that is the way it may have happened?

21 A I don't recall.

22 Q Incidentally, do you recall in that connection the name
23 Rooney being the name of one of the accounts?

24 A Pardon me?

25 Q Do you recall Rooney being one of the accounts involved?

1 A In this particular instance?

2 Q Yes.

3 A No, it was Oakwood Package and an account named Portifino
4 Restaurant that Joe Leahy had called on.

5 Q Now, after you received this information from the Asso-
6 ciation and if it was in the area of a particular individual,
7 there was no question about equity; you would tell Mr. Amoroso
8 or Mr. Sandler to assign that account to the individual cover-
9 ing the territory?

10 A Or I would go directly to the individual concerned and
11 tell him about it.

12 Q If he was in the office?

13 A That not necessarily would be the circumstance. Sometimes
14 I would go directly to him at the time that I may have had
15 occasion to talk to him about another subject.

16 Q Now some of these men live out of town and don't come into
17 the office except maybe once a week or once every two weeks,
18 is that correct?

19 A Right.

20 Q Now, if a new account opened in that area, how were they
21 notified? Would they be called at their home?

22 A They might be notified by myself; might be notified by
23 Sandler. They might be notified by the Office Manager. They
24 might be notified by Peg Lennehan, the telephone operator. It
25 could be a number of people.

1 Q When you say the telephone operator, she doesn't make the
2 determination; someone gives her the message and she relays
3 it?

4 A She relays it. I might give her the message and she
5 would relay it to the particular man to start calling on a
6 particular account.

7 Q In the case of Mr. Sandler relaying the message, you would
8 talk to Mr. Sandler and he in turn might call the individual
9 at his home and tell him to start calling on that particular
10 account?

11 A No, or when the salesman came into the office.

12 Q I am speaking to those occasions when they are not in
13 the office but the out-of-town type of salesman.

14 MR. SOMERS: I object. I think we are belaboring this
15 somewhat, this particular point.

16 TRIAL EXAMINER: I think that the present question may be
17 answered by the witness.

18 THE WITNESS: If we wanted the salesman to know about it
19 immediately --- Mr. Sandler was out in the trade frequently.
20 So we would tell the telephone operator to relay it to the
21 man when he called in. The men called into the office several
22 times a day.

23 TRIAL EXAMINER: Just a moment, so we can get off this
24 point. The question that the General Counsel asked you was
25 whether after discussing the matter with you, Mr. Sandler did

1 not on occasion call an out-of-town man and ask him to start
2 calling on a certain account. Would Sandler do this?

3 THE WITNESS: No.

4 TRIAL EXAMINER: Go ahead, Mr. Marrow.

5 Q (By Mr. Marrow) Now, with respect to Mr. Amoroso, you
6 testified that if he made sales not on a House account but on
7 an account normally serviced by another salesman, that the
8 wine man that has that store or account would be credited with
9 the commission, is that correct?

10 A Yes.

11 Q Did the same hold true with Mr. Sandler?

12 A Yes.

13 Q Were there occasions when the wine salesmen had their
14 own meeting in much the same way as the liquor salesmen, a
15 separate meeting?

16 A I think I referred to this once before. It was not a
17 actual meeting. It was a discussion, a conference. We dwelled
18 on that before.

19 Q You dwelled on it with Mr. Somers?

20 A Yes, sir.

21 Q And you would participate as well as Mr. Amoroso?

22 A Usually.

23 Q And you also visited --- Strike that. Were visits made
24 on occasion on wineries and places where wines are bottled and
25 made?

1 MR. SOMERS: By whom?

2 Q (By Mr. Marrow) By the salesmen?

3 A Yes.

4 Q And on occasion did you go with Mr. Amoroso individually
5 to wineries?

6 A I have never gone to a winery with Mr. Amoroso.

7 Q Now, did Mr. Amoroso have a printed calling card?

8 A Yes, sir.

9 Q And does that refer to him as the wine sales manager?

10 A A wine specialist.

11 Q A wine specialist?

12 A I don't recall the language on the card, wine specialist
13 or wine consultant.

14 Q Now, there was some testimony yesterday about Mr. Tarre
15 and Mr. Horowitz, do you recall that?

16 A Yes, sir.

17 Q Now, was Mr. Horowitz still with the company when you
18 went to your present location?

19 A He either left the company before we moved to the present
20 location or immediately afterward. I don't recall.

21 Q Can you fix the date, incidentally, when you moved to
22 Locust Street from Newfield Avenue?

23 A I think around 1959.

24 Q And was Mr. Tarre with the company when you were at the
25 Locust Street location?

1 A Yes, sir.

2 Q Did he occupy the same desk that Mr. Sandler utilized?

3 A Yes, sir.

4 Q Now, going back to Newfield Avenue, there has been some
5 testimony about the physical setup at that locale, do you
6 recall that? I don't believe you testified, but I think other
7 witnesses have who have been here.

8 A Yes.

9 Q Do you recall the physical setup of the Sales Room at that
10 address?

11 A Yes, sir.

12 Q Did you yourself occupy a desk in that Sales Room?

13 MR. SOMERS: I am going to object. I think we are getting
14 into a fairly remote area now.

15 TRIAL EXAMINER: I will permit this particular question.

16 THE WITNESS: I used a desk in another room and also a
17 desk in the Sales Room.

18 Q (By Mr. Marrow) And I believe at some point in time you
19 were known or had the title of Sales Manager?

20 A Yes, sir.

21 Q Were you also a Vice-President at that time?

22 A Yes, sir.

23 TRIAL EXAMINER: Mr. Marrow, I hope you are finished with
24 this particular line. I am not interested in going into the
25 witness' relationship way back in 1952 unless you have a special

1 purpose that I don't see at the moment.

2 MR. MARROW: I may be able to tie it in in a moment.

3 Q (By Mr. Marrow) And Horowitz and Tarre were working to-
4 gether in this same room or they occupied space in the same
5 room?

6 A Both worked in the field.

7 Q They weren't in the field all the time.

8 A That is right.

9 Q They had desks in there?

10 A Yes, sir.

11 Q And their titles at that time were what?

12 A They were senior salesmen. I believe they were called
13 supervisors.

14 Q They were also called Sales Managers, Sales Supervisors?

15 A At one time since Mr. Tarre liked titles, we called him
16 the Sales Manager.

17 MR. FEINGOLD: I object to that and move it be stricken.

18 THE WITNESS: Well, it's accurate.

19 TRIAL EXAMINER: The part of the witness' testimony that
20 went to what Mr. Tarre liked is stricken. As I understand it,
21 at one point he bore the title of Sales Manager, is that
22 correct?

23 THE WITNESS: Yes, sir.

24 TRIAL EXAMINER: All right, let's go on.

25 Q (By Mr. Marrow) When you moved to your present location,

1 Mr. Tarre had the title of Sales Manager and occupied the same
2 location that Sandler had when he was with the company, is that
3 correct?

4 MR. SOMERS: Same what?

5 Q (By Mr. Marrow) Same location, same desk?

6 A No.

7 Q He had a different desk?

8 A He was first called a Sales Assistant-Sales Manager.

9 Q When was that?

10 A Shortly after we moved to Locust Street.

11 Q And when did he become Sales Manager?

12 A Sometime subsequent to that. I didn't say he became
13 Sales Manager. He had the title of Sales Manager.

14 Q When did he get the title of Sales Manager?

15 A Sometime subsequent to that.

16 Q Can you fix the date?

17 A Early 1960's.

18 Q Do you recall that you testified about the negotiations
19 in 1960?

20 A Yes, sir.

21 Q Where were those negotiations conducted?

22 A On our premises on Locust Street.

23 Q And did Mr. Tarre participate in those negotiations?

24 A No, sir.

25 Q Did you know that he was a member of the Association?

1 A I really don't know if I knew he was a member. I wasn't
2 concerned with the membership of the Association. I couldn't
3 tell if I knew whether he was a member or not.

4 Q You heard MR. Goldstein testify earlier in this proceeding,
5 did you not?

6 A Yes.

7 Q Do you recall Mr. Goldstein stating that during the 1960
8 negotiations, he handed the minutes or draft of the contract to
9 Mr. Tarre, do you recall that testimony?

10 A Yes.

11 Q And were you physically in the negotiations when that
12 occurred?

13 A Yes.

14 Q And you recall that now?

15 A I don't recall his giving a document to him.

16 Q Now, were you aware that Mr. Horowitz was a member of
17 the Association?

18 A Yes.

19 Q And do you recall that he participated in negotiations at
20 some point of time?

21 A He didn't participate in negotiations.

22 Q How did you know he was a member of the Association?

23 A I remember that he was a member of the Association at the
24 time that the Association was organized.

25 Q And he was active in the negotiations at that time or active

1 in the Association?

2 MR. SOMERS: Objection.

3 THE WITNESS: No.

4 TRIAL EXAMINER: Was there an objection?

5 MR. SOMERS: Objection. There is a double question.

6 TRIAL EXAMINER: Apparently the witness answered no to
7 both questions. I will assume for the moment that --- Well,
8 gentlemen, I don't think it is fair to the witness nevertheless.
9 I will strike the question and the answer and let's go on.

10 Q (By Mr. Marrow) Was he active in the Association at that
11 time, 1952?

12 A I would say he was in the Association. I couldn't tell
13 you whether he was active or not.

14 Q How did you know he was in the Association?

15 A I remember that he became a member of the Association
16 when the other salesmen became members at the inception of
17 the Association in 1952.

18 Q And you had personal knowledge of that?

19 A I believe I was --- I had no interest who were members of
20 the Association except I knew the sales force and the warehouse-
21 men and drivers were members of the Association. Who was in it
22 and who was not in it was none of my concern.

23 Q And it is your testimony that over the years you were
24 never concerned who was in the Association?

25 A Not about individuals, no, sir.

1 Q You indicated either yesterday or the day before that you
2 were surprised to learn that Amoroso and Sandler were in the
3 Association?

4 A Yes, I indicated that I didn't know that they were members
5 until after a meeting in Adinolfi's office.

6 Q Why were you surprised?

7 MR. SOMERS: Objection.

8 TRIAL EXAMINER: Sustained.

9 THE WITNESS: I don't think I would characterize it as
10 surprise.

11 MR. SOMERS: The objection has been sustained. You didn't
12 have to answer.

13 Q (By Mr. Marrow) Over the years have the Association ever
14 asked for a union security clause?

15 MR. SOMERS: Does the witness know?

16 THE WITNESS: You would have to explain that question to
17 me.

18 TRIAL EXAMINER: Go ahead, Mr. Marrow.

19 Q (By Mr. Marrow) I take it from your answer you don't
20 know what a union security clause is?

21 A No, I don't.

22 Q Did they ever ask as part of the negotiations that all
23 employees who were eligible for membership be required to be
24 members of the Association?

25 MR. SOMERS: What period of time?

1 MR. MARROW: Any time.

2 MR. SOMERS: 1952 to the present?

3 MR. MARROW: 1952 to 1967.

4 THE WITNESS: Whether all employees of Brescome were re-
5 quired?

6 Q (By Mr. Marrow) All employees in the unit.

7 TRIAL EXAMINER: Gentlemen, let's not get this question
8 this confused. The question was whether the Association had
9 asked for a clause, isn't that right, Mr. Marrow?

10 MR. MARROW: Yes.

11 THE WITNESS: I don't believe so.

12 Q (By Mr. Marrow) Now, you learned for the first time that
13 Sandler and Amoroso were in the unit after a meeting at
14 Adinolfi's office?

15 A Yes, sir.

16 Q How did that come to your attention?

17 A I don't know how it came to my attention, but I learned
18 about it after that meeting.

19 Q Had somebody questioned their presence?

20 MR. SOMERS: Objection.

21 TRIAL EXAMINER: Overruled.

22 THE WITNESS: No.

23 Q (By Mr. Marrow) And you have no ---

24 A Did somebody question me as far as their presence? No.

25 Q But you have no independent recollection how it came to

1 your attention other than it came to your attention?

2 A No.

3 Q Was it part of a general discussion as to what took place
4 at that meeting?

5 A I don't recall the circumstances of how I learned about
6 it.

7 Q And you don't recall from whom?

8 A Right.

9 Q Do you recall when?

10 A Subsequent to that meeting.

11 Q How long after the meeting?

12 A Shortly.

13 Q What, a day?

14 A It could have been a day.

15 Q Did you at some time learn that a vote was taken at one
16 of these meetings in Adinolfi's office?

17 A Yes, I did.

18 Q Do you recall how that came to your attention?

19 A I don't know. I don't recall who related that to me.

20 Q When did he learn of that?

21 A Probably one of the salesmen.

22 Q Is this in conversation with the salesmen?

23 A I couldn't tell you because I don't recall the circum-
24 stances.

25 Q But you do recall that somebody told you that there was

1 such a meeting and what transpired at that meeting?

2 A I have learned about it subsequent to the meeting, yes.

3 Q Now, during this period of time, did you have occasion
4 to have any conversation with Mr. Adinolfi?

5 MR. SOMERS: What period of time are you talking about?

6 Q (By Mr. Marrow) June, 1967.

7 A I don't remember the date. The only conversation I recall
8 as far as Adinolfi was concerned was in a meeting in Mr.
9 Weschler's office in which he and I were there and Stanley
10 Goldstein was there, and I believe Adinolfi was there repre-
11 senting the Association.

12 Q Can you fix the date when this meeting occurred?

13 A No.

14 Q Do you know who arranged the meeting?

15 A No.

16 Q Do you know how you were told about it?

17 A Probably Mr. Weschler asked me to attend.

18 Q I assume this was after you received the demand letter
19 from the Association -- from the Distillery Workers?

20 A Yes, sir.

21 Q Can you fix a date with respect to when you received the
22 demand letter at which this meeting took place at Mr. Weschler's?

23 A No, I couldn't tell you what date.

24 Q Now, you testified about an Attorney Brennan, was he at
25 this meeting also?

1 A No.

2 Q Was this after you had the conversation with Atty. Brennan?

3 A Yes.

4 Q Was it prior to going to the National Labor Relations

5 Board Hearing in Boston?

6 A No.

7 Q It was after?

8 A Yes, sir.

9 Q So then the first --- Well, when before the National

10 Labor Relations Board Hearing did you first see or meet with

11 Mr. Adinolfi?

12 A I saw him at --- I said I saw him at the Boston Hearing.

13 Q That was the first time from the date you got the demand

14 letter that you saw or had any conversation with Mr. Adinolfi?

15 A As I recall, yes.

16 Q So that this other meeting that you were describing took

17 place after the Board Hearing?

18 A Yes, sir.

19 Q Incidentally, when you got the demand letter, were you

20 aware that Mr. Adinolfi was counsel for the Association?

21 A Yes.

22 Q And was any of the correspondence that you received,

23 either the petition or the demand letter, forwarded to Mr.

24 Adinolfi, if you know?

25 A The demand letter forwarded to Adinolfi?

1 Q The demand letter or the petition that you got from the
2 National Labor Relations Board.

3 A No, I believe that the petition reflected that a copy was
4 sent to him.

5 Q Is that your recollection?

6 A I believe so.

7 Q Was there any mention of the Association on that petition?

8 MR. SOMERS: Objection, the petition speaks for itself.

9 MR. MARROW: I am asking for his recollection.

10 TRIAL EXAMINER: I will take his recollection of it.

11 THE WITNESS: I believe it did.

12 Q (By Mr. Marrow) Mr. Lentz, I show you what has been
13 previously received in evidence as General Counsel's Exhibit
14 1 (a), the petition in the RC case, and ask if that refreshes
15 your recollection as to whether there is any mention of the
16 Association?

17 A I don't see it on here.

18 TRIAL EXAMINER: Mr. Marrow, let's proceed. I will have
19 reference to that.

20 Q (By Mr. Marrow) Now, you testified yesterday that you
21 received General Counsel's Exhibit 8, the demand letter, about
22 the 8th of June, do you recall that?

23 A I said the 8th or 9th.

24 Q And that you then called Atty. Brennan?

25 A Yes, sir.

1 Q And did you call him the same day you got the petition --
2 I mean the demand letter?

3 A I don't recall whether I called him the same day or the
4 day after.

5 Q Do you recall what day of the week that was?

6 A No --- That we received it or the call?

7 Q The day that you received it and the day you called him,
8 if you can recall either.

9 A I believe we received it on a Thursday. I recall we
10 received it on either a Thursday or Friday, and we called him
11 on either Thursday or Friday.

12 Q When were the meetings that you had with the employees,
13 you and Mr. Goldstein, in relationship to your call to Mr.
14 Brennan?

15 A Just after the call.

16 Q That same day?

17 A I don't recall if it was the same day, but shortly after
18 the call.

19 Q You testified that the meetings were on a Friday and
20 Saturday, is that right?

21 A The meetings might have been the following Friday, I
22 couldn't definitely place the date.

23 Q Prior to the meetings, other than the phone call, did you
24 have any face-to-face meetings with Mr. Brennan?

25 A I don't believe so.

1 Q So that whatever Mr. Brennan told you you could or could
2 not do was expressed over the telephone, is that right?

3 A Yes, sir.

4 Q Now, you testified that when you called Mr. Brennan, you
5 spoke to him about the unit, do you recall that?

6 A One of the things, yes.

7 Q Among other things, and you told him that the unit of the
8 petitioner, the Distillery Workers, was seeking was limited to
9 the salesmen?

10 A Yes.

11 Q Now, did you mention the petition during that telephone
12 conversation?

13 MR. SOMERS: Can I have the question reread.

14 TRIAL EXAMINER: Read the last question and answer.

15 (The last question and answer were read by the
16 Reporter.)

17 THE WITNESS: I don't believe we had received the petition
18 at that time. It was shortly after that.

19 Q (By Mr. Marrow) How long after that, do you recall?

20 A That we received the petition?

21 Q Yes.

22 A A very few days. Let's see, we received the demand letter
23 on a Thursday, and I think we received the petition on a
24 Tuesday. It really wasn't time to answer anything even if we
25 had an inclination to answer anything.

1 Q You don't recall whether you discussed the petition ---
2 Strike that. Did you ever discuss the petition with Atty.
3 Brennan?

4 A I believe so.

5 Q I take it that you had more than one telephone conver-
6 sation with Mr. Brennan?

7 A Yes, sir.

8 Q Did the subject of a card check ever come up during these
9 telephone conversations with Mr. Brennan?

10 A Of what?

11 Q Card checks.

12 A Card checks?

13 Q Yes. In other words, was there ever any conversation
14 about checking or reviewing the union authorization cards to
15 see if in fact they represented a majority of the salesmen?

16 A Well, I had mentioned to him in the original conversation,
17 among other things, that when I expressed surprise at the de-
18 mand letter that although the union had made reference to a
19 majority of the personnel, that we had no proof that they had
20 a majority nor had cards been offered to us in proof that they
21 had.

22 Q Did Mr. Brennan say anything to you about that?

23 A I don't recall.

24 Q You don't recall him saying that one way you might answer
25 this question was to examine the authorization cards and see

1 if they had a majority?

2 A No, I don't.

3 Q Now, with respect to the receipt of the petition which you
4 say you received a few days later, was it after that that the
5 meetings with the salesmen were held?

6 A I believe so, but I can't be sure.

7 Q Did you make any diary notes or calendar notes as to when
8 this meeting took place?

9 A No, sir.

10 Q Now, do you recall at the time these meetings were held
11 you had seen or had in your possession a copy of the letter
12 that was sent to all the salesmen by the Distillery Workers?

13 TRIAL EXAMINER: Mr. Marrow, I suggest you show the wit-
14 ness the letter.

15 MR. MARROW: I just wanted to lay a foundation first.

16 TRIAL EXAMINER: There has been a reference to more than
17 one letter. I think in fairness to the witness he should know
18 what letter you are talking about.

19 MR. SOMERS: Can we have a break at this time?

20 TRIAL EXAMINER: Mr. Marrow, is this a good point for us
21 to break? Do you want this question answered?

22 MR. MARROW: Let me just get this answered and perhaps it
23 would be appropriate.

24 Q (By Mr. Marrow) Mr. Lentz, I show you what has been
25 received in evidence as General Counsel's Exhibit 8 and ask if

1 you recognize that?

2 A I recognize the letter.

3 Q And did you see a copy of that prior to the meetings that
4 you held with your employees in June of 1967?

5 A I couldn't tell whether I saw the copy before or after the
6 meeting. I couldn't pin the time.

7 Q Do you recall how the copy was shown to you?

8 A It was shown to me by one of the salesmen.

9 Q Do you recall whether you physically --- Strike that. Do
10 you recall whether that letter came into your possession at
11 that time or whether it was simply shown to you?

12 A It was shown to me.

13 Q I take it it is your testimony that during the meetings
14 with the employees you did not have a copy of that letter in
15 your possession?

16 A I don't recall having a copy. I had seen it at some junc-
17 ture, but I couldn't place when I had seen it in reference to
18 the meeting.

19 Q Do you recall whether any employees during these meetings
20 offered to show you that letter?

21 A At the meetings?

22 Q Yes.

23 A I don't believe so.

24 Q Do you know whether Mr. Goldstein had a copy of that
25 letter in his possession?

1 A I don't know.

2 MR. MARROW: This might be a good chance to break.

3 TRIAL EXAMINER: Yes, we will break until ten minutes past
4 three.

5 (A recess was taken.)

6 TRIAL EXAMINER: On the record. Mr. Marrow?

7 MR. MARROW: Could I have the last question and answer?

8 (The last question and answer before the break were
9 read by the Reporter.)

10 Q (By Mr. Marrow) Now, you testified that you were quite
11 surprised to receive the demand letter from the Distillery
12 Workers, do you recall that?

13 A Yes.

14 Q Prior to the receipt of that demand letter, isn't it a
15 fact that there were no meetings between the company and the
16 Association for over three years?

17 MR. SOMERS: Objection. What kind of meetings?

18 MR. MARROW: Any kind of meetings.

19 TRIAL EXAMINER: All right, overruled.

20 THE WITNESS: I would say yes.

21 Q (By Mr. Marrow) In fact, according to your testimony the
22 last negotiating meeting was 1963?

23 A Right.

24 Q So that things have been relatively quiet and complaisant
25 for that period of time?

1 A Yes, sir.

2 Q Now, during that 1963 --- Strike that. My notes indicate
3 that at first it was 1963, then on reflection you thought it
4 was 1962 when you negotiated with Mr. English with reference
5 to the major medical and life insurance?

6 A In 1962, yes.

7 Q Did you participate in any negotiations after 1962 and
8 prior to July of 1967?

9 A 1963 there was a matter concerning the pension plan.

10 Q Did you participate in those negotiations?

11 A Yes, sir.

12 Q Now, going backwards, prior to 1962 you testified that you
13 participated in the 1960 negotiations?

14 A Yes, sir.

15 Q And other than to say that you thought that was some time
16 after the middle of the year, I don't believe you were able
17 to pinpoint the date when those negotiations took place?

18 A Right.

19 Q Do you recall that sometime in 1960, the latter part of
20 1960, a petition was filed by the Teamsters Union?

21 MR. SOMERS: Objection.

22 TRIAL EXAMINER: Mr. Somers, this gets a little vague
23 in my memory. I don't know whether we had a stipulation on
24 this point.

25 MR. SOMERS: I believe there is a stipulation that a

1 petition was filed. I did not stipulate to the date the peti-
2 tion was filed.

3 MR. MARROW: Can't I ask the witness a question?

4 TRIAL EXAMINER: That was the question here as I recall.

5 All right, go ahead, Mr. Marrow.

6 THE WITNESS: Yes.

7 Q (By Mr. Marrow) And do you recall when that was?

8 A I don't recall specifically.

9 Q With respect to the negotiations that were taking place
10 or had occurred in 1960, can you fix a date as to when the
11 petition was filed?

12 A No.

13 Q Now, how many negotiation sessions did you participate in
14 in 1960?

15 A Two or three.

16 Q And were these all within a relatively short period of time?

17 A Yes.

18 Q And what was the principal subject of discussion?

19 A As far as the warehousemen and drivers were concerned, the
20 rates of pay and vacations and C.M.S. and Blue Cross and in-
21 surance I believe, and sick leave.

22 Q This was always with respect to the drivers and warehouse-
23 men?

24 A Yes, sir.

25 Q What changes, if any, do you recall that the Association

1 requested regarding the salesmen in 1960?

2 A I don't recall any specific changes in the contract. There
3 had been some discussion about commissions in respect to half
4 gallons of liquor, I believe.

5 Q What was the discussion in that regard, if you recall?

6 A Discussions in connection with the rate of commission on
7 that size, and we explained that we had been working on a
8 short markup and that was the reason for the lower percent
9 commission.

10 Q And is that the end of the discussion?

11 A Ultimately, I think ultimately we raised the rate of
12 commission on that size. Other than that, I don't recall any
13 specific changes as far as the salesmen were concerned.

14 Q When you say you raised the rate, where was that done?

15 On the agreement? Was that spelled out on that 1960 agreement?

16 A I don't believe so.

17 Q Was it some separate document that covers commissions?

18 A No. No, it wasn't spelled out in the agreements. We
19 changed it. I believe we changed the commission on the half
20 gallon.

21 Q And that was your recollection, that was the only demand
22 that the Association made in 1960 regarding the salesmen?

23 A I believe so.

24 Q Now, as I recall the testimony, after the agreement had
25 been originally reached on the drivers and warehousemen, word

1 came back to the company that the drivers were dissatisfied
2 with that agreement, do you recall that?

3 A Yes, I believe so.

4 Q And there was some subsequent meetings afterward?

5 A Yes.

6 Q How many more meetings did you have?

7 A I don't remember how many more, a few more meetings.

8 MR. SOMERS: Excuse me?

9 THE WITNESS: There were more meetings. I don't recall
10 how many.

11 Q (By Mr. Marrow) More than one?

12 A Yes.

13 Q So altogether in 1960 how many meetings were there with
14 respect to the total negotiations?

15 A Several.

16 Q Several?

17 A I couldn't give you a number.

18 Q You also don't recall the relationship of the final or
19 ultimate agreement as you refer to it and the time when this
20 petition was filed by the Teamsters?

21 A No.

22 Q Now, in 1956, did you participate in those negotiations?

23 A Yes.

24 Q And how many meetings were there in 1956?

25 A There were a few meetings.

1 Q And was this over a short period of time?

2 A Yes.

3 Q Can you fix the date in 1956 about when these meetings
4 took place?

5 A The latter part of the year.

6 Q And these agreements originated as a result of some dis-
7 satisfaction expressed by the drivers?

8 A I don't recall how they originated. There had been at
9 some stage dissatisfaction after a first negotiation about
10 rates, and then we came back and we renegotiated higher rates.

11 Q Was there a strike of the drivers in 1956?

12 MR. SOMERS: Objection.

13 TRIAL EXAMINER: Mr. Marrow?

14 MR. MARROW: I think it may be pertinent, this entire line
15 of negotiations from 1952 to 1967.

16 TRIAL EXAMINER: Well, I know this strike has come up
17 previously. The only purpose that I saw at the time had to do
18 with a possible argument on General Counsel's part that the
19 Association was malvanized into action possibly when the em-
20 ployees either went on strike or were being organized by some
21 other union. Is that your point?

22 MR. MARROW: Yes, sir.

23 MR. FEINGOLD: I made a point on that, too, and it went
24 deeper than that.

25 TRIAL EXAMINER: I better hear from you. I don't know

1 MR. NARROW: I assume it's automatic. That is why I don't
2 voice it.

3 Q (By Mr. Marrow) In any event, you did testify the drivers
4 had expressed dissatisfaction with respect to their earnings or
5 rate of pay?

6 A At some juncture.

7 Q How long after that did the negotiations begin?

8 A After what?

9 Q After they expressed dissatisfaction.

10 A Shortly. Shortly after that.

11 Q And wasn't there an occasion when an agreement that had
12 been reached was again rejected by the drivers in 1956?

13 A I believe so.

14 Q Now, can you pinpoint or recall any differences between
15 the 1956 agreement for the drivers and the 1960 agreement?

16 A In the rate of hourly pay, in the area of vacations.

17 Q What were the differences in vacation?

18 A The two-week vacation. The area of insurance. I think
19 we also gave them or paid for the C.M.S. and Blue Cross and
20 life insurance. There was a clause in there about sick leave.
21 I don't recall anything else.

22 Q Now, there are a number of conditions that the drivers
23 had that were not applicable to the salesmen, isn't that so,
24 in 1956 in any event?

25 A I don't recall.

1 Q Well, the salesmen didn't have a life insurance or C.M.S.
2 in 1956, did they?

3 MR. SOMERS: I would like to object. The question pre-
4 ceding was the differences, as I understand it, between the
5 1956 and the 1960 contract.

6 THE WITNESS: We are going back and forth to 1956 ---

7 TRIAL EXAMINER: Would you read the last question?

8 (The last question was read by the Reporter.)

9 TRIAL EXAMINER: The objection is overruled.

10 MR. SOMERS: May I be heard? The question which preceded
11 the one she has read pertained to the differences between the
12 1956 and 1960 contract. Are you going back to 1956?

13 TRIAL EXAMINER: Gentlemen, let's not have any argument.
14 The present question seems to be quite clearly did the drivers
15 and the warehousemen have a certain benefit in 1956. Is that
16 your question?

17 MR. MARROW: That the salesmen did not.

18 TRIAL EXAMINER: Suppose you rephrase it. We are referring
19 to 1956 only as I understand it.

20 Q (By Mr. Marrow) Do you recall, Mr. Lentz, whether or not
21 the agreement or memorandum that was reached with the drivers
22 contained benefits that the salesmen did not receive in 1956?

23 A Some of the salesmen were a party to a group insurance
24 plan ---

25 MR. FEINGOLD: I move to strike that as not responsive.

1 TRIAL EXAMINER: The answer as far as it goes is stricken.
2 Will you address yourself to the question the General Counsel
3 asked.

4 MR. SOMERS: Can we have the question read again?

5 (The pending question was read by the Reporter.)

6 THE WITNESS: Some I guess, yes.

7 Q (By Mr. Marrow) Had the salesmen requested any of these
8 benefits for their ---

9 A No.

10 Q And yet the same individuals who negotiated for the drivers
11 were the salesmen, according to your testimony?

12 MR. SOMERS: Objection. Argumentative.

13 TRIAL EXAMINER: All right, I think the record shows that
14 the two men who negotiated in 1956 were salesmen, or whenever
15 that agreement was reached.

16 Q (By Mr. Marrow) Now, you testified that either you or
17 your father dictated the 1956 memoranda?

18 A Yes, sir.

19 Q How many copies of that were made at the time it was
20 dictated?

21 A I don't recall how many copies.

22 Q Just yourself and your father participated in the nego-
23 tiations for the company?

24 A I believe so.

25 Q Did you communicate the results of that negotiation to

1 anyone else in the company?

2 A Probably Stanley Goldstein.

3 Q Was he given a copy of that memorandum, do you know?

4 A Could have been.

5 Q Now, in 1952 there was no agreement in writing at all,
6 isn't that so?

7 A Right.

8 Q And the agreement, whatever it was, was strictly oral?

9 A Yes.

10 Q Now, can you tell us how, if at all, the understanding that
11 was reached in 1952 differed from any rates of pay or compen-
12 sation that either the drivers or the salesmen were getting
13 prior to the negotiations?

14 A You are talking about the differences between 1952 and
15 1956?

16 Q No, sir, between 1952 when you reached this oral agree-
17 ment, how that differed or changed the conditions that existed
18 immediately before you reached the ultimate agreement as you
19 have described it?

20 A The differences between conditions before the agreement
21 in 1952 and after?

22 Q Yes.

23 A I don't believe there were any differences, just an under-
24 standing what the status was at the time.

25 Q Were there in fact drivers in your employ at the time this

1 agreement was reached?

2 A Yes, I believe so.

3 Q Wasn't there a period in 1952 when all the deliveries were
4 sub-contracted to another firm?

5 MR. SOMERS: Objection.

6 TRIAL EXAMINER: Overruled.

7 THE WITNESS: In that general area, 1952, 1953, during
8 that general time.

9 Q (By Mr. Marrow) Can you recall for how long a period of
10 time that was?

11 A What was?

12 Q That you sub-contracted your deliveries?

13 A I'm not sure whether that was for a month or a few months

14 Q Now, in 1960 do you recall when you had this discussion
15 with Atty. Ribicoff concerning the management rights clause?

16 A Subsequent to the negotiations concerning the contract.

17 Apparently he had read the proposed contract, and I believe he
18 had read the proposed contract and suggested an addendum.

19 Q When you say proposed contract, do you mean ---

20 A The contract that we are talking about, 1960.

21 Q Was it executed and signed when Mr. Ribicoff read it?

22 A Yes, I believe it had been.

23 Q So that then you had to go back to the Association with
24 this proposed agreement?

25 A Yes.

1 Q And there were more negotiations in that area?

2 A Well, the suggestion by Atty. Ribicoff had been proposed
3 to them and it was agreed upon.

4 Q Without any discussion?

5 A There was discussion about what the addendum would be,
6 and we came to an agreement.

7 Q Did Mr. Adinolfi participate in these 1960 negotiations?

8 MR. SOMERS: Objection. What is meant by participate?

9 TRIAL EXAMINER: Is that the purpose of your objection?

10 MR. SOMERS: Yes.

11 TRIAL EXAMINER: I will overrule that. If the witness
12 does not understand, he can indicate that.

13 THE WITNESS: Will you ask the question again?

14 Q (By Mr. Marrow) Did Mr. Adinolfi participate in the 1960
15 negotiations?

16 A I don't believe he participated with us. He may have been
17 in consultation with the men.

18 MR. FEINGOLD: I move to strike that out, "he may have
19 been."

20 TRIAL EXAMINER: Overruled.

21 Q (By Mr. Marrow) Do you know who prepared the 1960 agree-
22 ment in its present form?

23 A I believe it was prepared by Atty. Adinolfi.

24 Q Do you know under what circumstances?

25 A No.

1 C And it's that agreement that you then took to Mr. Ribicoff
2 to have him examine?

3 A Pardon me?

4 Q It is that agreement that you took to Mr. Ribicoff to have
5 him examine?

6 A Yes, sir.

7 C The agreement that Mr. Adinolfi prepared?

8 A Yes, sir.

9 Q And the only change that he suggested was this management
10 rights clause?

11 A By him you mean Ribicoff?

12 Q Yes, and other than that time, as far as you know, there
13 were no face-to-face meetings with Mr. Adinolfi during 1960
14 regarding negotiations?

15 MR. SOMERS: Objection.

16 TRIAL EXAMINER: It's been asked and answered. Mr. Marrow,
17 some things can be stretched beyond the point of relevance. I
18 think that factor has a point of relevance, and I think you
19 have covered it, and you have an exception to my cutting you
20 off.

21 MR. FEINGOLD: I assume whenever you give the General
22 Counsel an exception, the same applies to me whether I say
23 anything or not.

24 TRIAL EXAMINER: No, not necessarily.

25 MR. FEINGOLD: Then I am going to except to the ruling.

1 TRIAL EXAMINER: Your objection is overruled. I might
2 suggest to all of you gentlemen it may not be necessary to
3 burden the record more than once. If I am wrong once, I am
4 wrong and I don't think I am.

5 Q (By Mr. Marrow) Getting back to the present, you testi-
6 fied at some length yesterday regarding the meetings with
7 employees in June of 1967 in what is or was then your father's
8 office?

9 A Yes.

10 Q What time of day did these meetings begin?

11 A In the morning.

12 Q And they were scheduled on a regular basis right through
13 the day?

14 A Yes.

15 Q Now, prior to coming there that day or whenever the
16 schedule was set up, were the employees advised as to the
17 purpose or what the purpose of this meeting was?

18 A No, I don't believe so.

19 Q So we can assume from that answer that when they got in
20 they had no idea for what reason they were called in?

21 A Right.

22 Q Now, do you recall the first individual or employee that
23 you talked with that day?

24 A No.

25 Q Do you recall the last?

1 A No.

2 Q Do you recall who the people were that came in on Saturday?

3 A I really don't.

4 Q How many people did you talk to altogether?

5 MR. SOMERS: Objection.

6 TRIAL EXAMINER: Overruled.

7 THE WITNESS: How many people did we talk to --- Let's
8 see, 20 or 21.

9 Q (By Mr. Marrow) This is over a period of two days?

10 A Yes.

11 Q Were the meetings all relatively the same length of time
12 or did they vary?

13 A They varied.

14 Q Now, during this period, did any of the employees direct
15 any questions to either yourself or Mr. Goldstein?

16 A I don't recall.

17 Q As I recall your testimony, you told some of the employees
18 that in the past if you had any differences or misunderstandings
19 you were always able to come to an agreement, do you recall
20 that?

21 A Yes.

22 Q What differences or misunderstandings did you have refer-
23 ence to?

24 A If they had any complaints about delivery or service or
25 questions about company policies in various areas, we were

1 always able to explain it and clarify it to everyone's satis-
2 faction.

3 Q Was any reference made to the Association having come to
4 you with complaints and the matters having been resolved?

5 A No.

6 Q Now, all of the men, as far as you knew, were acquainted
7 with these benefits that they received, such as the profit-
8 sharing plan, life insurance, major medical, isn't that so?

9 A Yes, sir.

10 Q When employees were hired, didn't you explain what these
11 plans were that you had in effect?

12 A Yes, sir.

13 Q Incidentally, when people were hired, was anything said
14 by you as to the Association and the fact that you had an agree-
15 ment with the Association covering these various plans and
16 programs?

17 A There was reference to the effect that there was an Asso-
18 ciation of the employees. I couldn't give you details of what
19 that conversation consisted of.

20 Q This is generally when you talked to new people that you
21 were interviewing. Do you remember if anything was said to
22 Sandler or Amoroso when they were interviewed?

23 A I don't recall.

24 Q Now, more specifically you testified that Mr. Shea and
25 Mr. Gasiorek were in together to see you and Mr. Goldstein, do

1 you recall that meeting?

2 A Yes.

3 Q What was said about the percentage of commissions, what
4 was the discussion?

5 A Well, we reviewed the earnings and got down to the bottom
6 line of what percentage of the sales price their earnings re-
7 flected.

8 Q Now, how was this done, were you working with one man and
9 Mr. Goldstein working with the other?

10 A No, we took each man individually.

11 Q And they were both there at the same time?

12 A Yes.

13 Q So there was no secret made as to what their earnings
14 were as between the two?

15 A I don't believe so.

16 Q Was this also true of some of the other employees who came
17 in small groups?

18 A I think that the others were individual meetings. As I
19 recall, they were the only two that came in together.

20 Q Now, you testified that as far as you could determine
21 the men were satisfied with their terms of employment and
22 that you had no reason to believe otherwise. How would you
23 make that determination?

24 MR. SOMERS: Objection.

25 TRIAL EXAMINER: Mr. Marrow?

1 MR. MARROW: I would like to know the basis for the ob-
2 jection.

3 TRIAL EXAMINER: No, I am asking you why it is relevant?

4 MR. MARROW: Well, it presumes that some interrogation or
5 questioning was done to determine that the men were satisfied.
6 I want to know what was asked.

7 MR. SOMERS: I don't think that presumption from such a
8 statement develops at all.

9 MR. FEINGOLD: I think all conversations at a time like
10 this are relevant.

11 TRIAL EXAMINER: Yes, the question of the witness was what
12 was the basis for a statement he made in a conversation. I
13 don't think that question is necessarily relevant on its face,
14 but General Counsel has stated a relevant purpose, so I will
15 overrule the objection.

16 THE WITNESS: The basis that we had always had a very
17 close relationship with most of the employees. We had had an
18 open-door policy as far as my father was concerned and myself.
19 Anything that the employees had on their minds, business prob-
20 lems, personal problems, and anyway they had no hesitation in
21 discussing them with us as a group or individually. On that
22 basis I made that statement.

23 Q (By Mr. Marrow) And what you have just said is in fact
24 what you told a number of these employees on the Friday and
25 Saturday in question, isn't it; that is, this open-door policy?

1 A I didn't have to remind them. They knew about it.

2 Q Did you tell them?

3 A Did I tell them what?

4 Q That you had an open-door policy, and they could come to
5 you or your father with their problems and you would iron them
6 out?

7 A I don't recall if I said that at that time or not.

8 Q Did you say it at a later time?

9 A We had mentioned it to them off and on on several occa-
10 sions. They knew this was the general condition throughout
11 the firm.

12 Q Well, you say you mentioned it on and off several times.
13 Several times when, in June of 1967?

14 A No, during the course of history of the company.

15 Q Did you advise the Association or any of its members that
16 you planned to call the employees in to discuss these matters
17 with them?

18 MR. SOMERS: Objection. What is the relevancy?

19 TRIAL EXAMINER: Read that to me.

20 (The pending question was read by the Reporter.)

21 TRIAL EXAMINER: Mr. Marrow, the company is not being
22 charged with violation of an obligation to the Association.

23 MR. MARROW: I appreciate that, but I think it might in-
24 dicate a pattern or course of conduct which should not have
25 been followed was followed.

1 TRIAL EXAMINER: No, I don't agree with that, but I will
2 take it. There is a relevance. If you gentlemen want to know,
3 I will tell you after I hear the answer.

4 Q (By Mr. Marrow) Do you remember the question, Mr. Lentz?

5 A I have already stated we didn't tell the salesmen ahead
6 of time the reason for our calling them in. No, we didn't re-
7 lay it to the Association.

8 TRIAL EXAMINER: Mr. Somers, the reason I permitted it is
9 it may have a relevance to the company's claim of contract
10 bar.

11 MR. FEINGOLD: I think it has a relevance on the 8 (a) (2)
12 question.

13 TRIAL EXAMINER: Enough, Mr. Feingold. The question need
14 have only one relevance for me to receive it as admissible. I
15 may use it for any relevant purpose.

16 Q (By Mr. Marrow) Now, recall the meeting with Mr. Leahy
17 that you described on this Friday or Saturday?

18 A Yes.

19 Q Do you remember how that meeting started out or what the
20 first conversation was?

21 A How it started? No, I don't.

22 Q You testified that he volunteered the information that he
23 was satisfied with the way things were, and he had some un-
24 fortunate experience with unions in California, do you recall
25 that?

1 A Yes.

2 Q Well, at what point and how in the conversation did that
3 information come up?

4 A Well, we had gone over his earnings and reviewed the bene-
5 fits that he and the rest of the men had derived, have been
6 deriving, and he apparently assumed that we were calling him
7 in pursuant to the letter from the Union, and he voluntarily
8 expressed his distaste for unions in that manner.

9 Q When you say he apparently assumed, on what do you base
10 that assertion?

11 A We were talking about the benefits he had derived through
12 the Association and the company's and his earnings and the
13 increase in his earnings through the years, and he voluntarily
14 stated his sentiments about unions on the basis of his experi-
15 ence in California.

16 Q Was there any mention of the Distillery Workers during
17 this conversation?

18 A I don't recall.

19 Q But that is your recollection as to what ---

20 A He was characterizing his sentiments towards unions in
21 general.

22 Q Had there been any mention to unions prior to his making
23 this statement?

24 A I don't believe so.

25 Q Do you know if Mr. Leahy was aware at that time of the

1 filing of the petition?

2 A I don't know.

3 Q Did Mr. Leahy show you a letter which he received which
4 I showed you?

5 A I don't recall that he showed me. I don't recall who
6 showed us the letter.

7 Q Was it possible that on this occasion that the letter was
8 shown to you that I previously showed you, General Counsel's
9 Exhibit 8?

10 A It's possible.

11 Q Do you recall making any comment about that letter?

12 A To whom?

13 Q To Mr. Leahy?

14 A No.

15 Q How long did the conversation with Mr. Leahy last, do you
16 remember?

17 A Ten or fifteen minutes.

18 Q Now, what were the other salesmen who were not present
19 doing during the time these interviews were taking place?
20 Were they waiting to come in and speak to you?

21 MR. SOMERS: Objection. What is the relevancy of what
22 they were doing?

23 TRIAL EXAMINER: Sustained.

24 Q (By Mr. Marrow) Now, I take it as a form of preparation
25 for these meetings you and Mr. Goldstein had made up the review

1 of their earnings for that year and the prior year, is that
2 right?

3 A Yes.

4 Q And you had these all ready to show the employees as they
5 came in?

6 A Yes.

7 Q Now, after these meetings concluded on Saturday, can you
8 tell us in relation to that point of time when you held the
9 group meetings with all the employees, the first one that you
10 have described?

11 A We didn't call a group meeting for that purpose. We had--
12 These things were discussed after our regular sales meeting on
13 Friday.

14 Q Can you fix the date when the first discussion took place
15 with all of the salesmen as a group?

16 A Could have been the following Friday.

17 Q And you are unable to fix the calendar date when that
18 occurred?

19 A No.

20 Q Who spoke at that meeting other than yourself?

21 A I don't recall whether my father spoke at that meeting in
22 addition to myself or not.

23 Q Do you recall whether Mr. Goldstein spoke at that meeting?

24 A No, I don't.

25 Q Now, I believe that it was at this first meeting that you

1 testified that you related out over the years there had been
2 an amicable relationship between the employees and the company
3 and the Association, is that correct?

4 A Yes.

5 Q And you stated that there had not been any strikes or
6 rumblings?

7 A I don't recall I stated that at that meeting. I couldn't
8 tell you. I couldn't pinpoint my reference to that at that
9 particular meeting or subsequent meetings.

10 Q Did you have any prepared minutes or text?

11 A I had some notes, yes.

12 Q Now, when you stated at whatever time it was that there
13 were no strikes or rumblings, I assume you had reference to
14 the salesmen only, is that right?

15 A I had reference to the fact there hadn't been any strikes
16 that couldn't be resolved, yes.

17 Q That isn't what you said, is it?

18 A At that time I was probably referring to just the sales-
19 men, yes.

20 Q In fact there had been strikes of the drivers in the past.

21 A Yes.

22 MR. SOMERS: Objection.

23 TRIAL EXAMINER: Overruled. The witness has answered it
24 and confirms the testimony.

25 MR. FEINGOLD: I didn't get the answer to the question.

1 TRIAL EXAMINER: The witness said yes.

2 MR. FEINGOLD: There had been strikes?

3 TRIAL EXAMINER: Of the drivers.

4 Q (By Mr. Marrow) Now, following the speech or the first
5 meeting at which there was any discussion with reference to
6 the organizational efforts, when was the next meeting at which
7 either you or Mr. Goldstein or your father spoke to the sales-
8 men as a group?

9 A A week or two.

10 Q Would that have been before or after the NLRB Hearing?

11 A The second meeting?

12 Q Yes.

13 A I don't recall whether it was before or after. We spoke
14 at several meetings, and I couldn't pinpoint the relationship
15 between that and Boston.

16 Q Well, give us your best recollection as to what took place
17 at the second meeting at which there was a speech to the group?

18 A Well, it would have been a statement similar to the first
19 statement that we made in that it seemed to be a happy family
20 and things were going along well, and we hoped that they would
21 continue. It may be at that second meeting that I had made
22 reference to the fact that we had been able to have a happy
23 relationship without strikes and anticipated that that would
24 continue and that in the event that another union was certified,
25 that at that time there would be bargaining, and that if we

1 could not come to an agreement, that an alternative could be
2 a strike, but we hadn't anticipated that that would happen.

3 Q Was there any discussion about the certification or cer-
4 tification procedure at that meeting?

5 A Pardon me?

6 Q Was there any discussion about the certification or certi-
7 fication procedure at that meeting you have just described?

8 A No.

9 Q You just testified that if another union was certified
10 that you explained to the audience what you meant by that.

11 A I don't even recall if I used the word certified, if another
12 union represented the employees.

13 Q Was there any discussion about an election at that second
14 meeting?

15 A I don't recall.

16 Q Did anybody else speak at that second meeting?

17 A My father may have spoken at that meeting.

18 Q Do you recall what his remarks were?

19 A He spoke about more or less the history and the circum-
20 stances which had taken place within the company since we had
21 taken over and the fact that we had -- he had been able to
22 obtain a number of new lines, which the company had not repre-
23 sented before; had made substantial gains in various areas
24 which were a benefit to the men and to all of us combined; and
25 the earnings were at a high level, as high or higher than most

1 of the other competitors; that we enjoyed a terrific image in
2 the industry to which everyone connected with Brescome had
3 contributed; and that he was happy about the past as he had
4 hoped they were and looked forward to a happy and favorable
5 future.

6 Q Was anything said about the Distillery Workers during
7 that speech?

8 A I don't recall saying anything about the Distillery
9 Workers Union.

10 Q How many times did your father speak prior to the elec-
11 tion to the assembled salesmen?

12 A Once or twice.

13 Q Now, do you recall at any of these meetings his describ-
14 ing an anticipated change in the hierarchy of the company?

15 A Yes, he may --- I believe he had mentioned that I was
16 going to take over the Presidency of the company, and he was
17 going to take it easier.

18 Q And was anything said in connection with the outside
19 union in that regard?

20 A No, I don't believe so.

21 Q Do you recall the statement to the effect that if an out-
22 side union got in, this would be a slap in the face to both
23 your father and yourself?

24 A No.

25 Q You don't recall that?

1 A No.

2 Q Do you recall a statement that it would be unfair to his
3 son to be saddled with an outside union when he was just taking
4 over the company and getting his footing?

5 A He didn't say that in my presence.

6 Q Now, do you recall any other meetings at which you address-
7 ed the salesmen other than the two you have described?

8 A Yes.

9 Q When is the next meeting that you remember?

10 A It was after the election.

11 Q After the election. Do you recall any meetings before
12 the election or just prior to the election?

13 A Those I described.

14 Q Well, do you mean you aren't able to fix the date? I
15 understood your testimony to be you weren't sure.

16 A Oh, the last meeting was probably a day or two before
17 the election.

18 Q And this would have been after the NLRB Hearing in
19 Boston, is that correct?

20 A Yes, sir.

21 Q Can you recall what took place at that meeting?

22 A I believe I referred to the fact that an election had
23 been held and that the salesmen had expressed their will, their
24 free will and free choice and that we felt that that would be
25 end of the matter.

1 Q This was a meeting before the election?

2 A I said after.

3 Q I thought you were talking about the meeting ---

4 A No, I said after.

5 Q Wasn't there a meeting a couple of days before the
6 election?

7 A I talked about that, a couple of meetings before the
8 election, and those were the ones I referred to.

9 Q Let's go back a moment. You told us before the very first
10 meeting, which took place shortly after you spoke, you and Mr.
11 Golastein spoke with the salesmen and was that in June?

12 A I believe so.

13 Q Now, was there another meeting before you went to Boston
14 in connection with the representation petition, another meet-
15 ing at which you spoke with all the salesmen concerning the
16 proceedings?

17 A Yes.

18 Q So that would have been the second meeting?

19 A Yes.

20 Q That took place before you went to Boston?

21 A Yes, I believe so.

22 Q You went to Boston on the 5th of July?

23 A Yes, sir.

24 Q And the election was on the 21st of July. Between the
25 5th and the 21st, were there any meetings that you haven't told

1 us about?

2 A Well, there was one meeting, I don't remember the date,
3 in which I believe I talked about the character of the company
4 or the relationship in a particular company which would en-
5 courage a change in representation, and I proceeded to talk
6 about hypothetical circumstances and felt that those circum-
7 stances were not present in the Brescome Organization.

8 Q Anything else said at that meeting?

9 A Pardon me?

10 Q Was anything else said at that meeting?

11 A Well, there were several meetings. I can't now pinpoint
12 at any particular meeting.

13 Q Can you tell us what these hypothetical circumstances
14 were that you have described?

15 A Well, for instance, if management were unfair to their
16 employees or treated them in a manner which would initiate
17 unhappiness in any form or didn't give them a forum for com-
18 plaints, that hadn't given them an opportunity to improve their
19 position or improve their earnings or placed them in a position
20 where they couldn't increase their earnings, or there might be
21 salesmen who would want to use another union as a crutch to
22 protect them from being lazy and not conducting their business
23 in a conscientious way, and in other areas along that line. I
24 then proceeded to answer my own hypothetical questions by in-
25 dicating that I didn't believe that we had men who were in that

1 category.

2 TRIAL EXAMINER: Is this a good place for a short recess?

3 MR. MARROW: Sure.

4 TRIAL EXAMINER: Suppose we take a five-minute recess.

5 (A recess was taken.)

6 TRIAL EXAMINER: Mr. Marrow, are you prepared to continue?

7 Q (By Mr. Marrow) Had you completed your answer. Mr. Lentz?

8 A Well, I think there were other things I mentioned at that
9 meeting which I wanted to remind the men about.

10 Q Could you tell us what those items were, if you recall?

11 A Well, there are other things that we do and have done as
12 a matter of policy and practice to help the men cement the
13 relationship with the trade that other houses don't do and
14 which has contributed to their increasing their earnings and
15 helping our own image -- remembering accounts at different
16 events: birthdays: funerals; contributing to the openings of
17 certain organizations: giving out a few bottles without asking
18 for participation from the men: displaying at our expense,
19 which helped promote their brands and aid the turnover of the
20 brands in the accounts which they don't contribute to but are
21 the beneficiary of; other things that we do and have always
22 done that other houses don't, or if they do, they demand par-
23 ticipation from the men. I wanted to remind them of those
24 things, things that we do and continue to do and will do in
25 the future, and I really didn't think that there was a climate

1 at Brescome in which another, any other union would be welcome
2 by the men.

3 Q Was this what was on your mind when you earlier indicated
4 surprise at receiving the demand letter on the 8th of June?

5 MR. SOMERS: Objection.

6 TRIAL EXAMINER: This was a communication of surprise to
7 the company's attorney. I think that is the occasion you are
8 talking about?

9 MR. MARROW: Yes.

10 TRIAL EXAMINER: The objection is sustained.

11 MR. MARROW: It was my understanding that Mr. Lentz in-
12 dicated that he was the one who was surprised, not the attorney.

13 MR. FEINGOLD: I believe that is a proper question on
14 cross-examination when the witness testified that he showed
15 surprise and in the light of his testimony now.

16 MR. SOMERS: He testified as to what he told the men. I
17 don't think the subjective explanation of his surprise is proper
18 questioning.

19 TRIAL EXAMINER: I have been reflecting on this, and there
20 is a matter involved which the General Counsel hasn't mentioned
21 which now occurs to me, and it disturbs me somewhat, and I
22 would like to discuss it with your gentlemen outside the hear-
23 ing of the witness.

24 Mr. Lentz, I will try not to keep you out as long as I
25 did last time. As a matter of fact, this should be rather

1 short.

2 (The witness was temporarily excused.)

3 TRIAL EXAMINER: The General Counsel didn't mention this.
4 He might have had it on his mind, but sometimes I am not a
5 mind reader. There is an issue in this case as to whether or
6 not Respondent was in good faith in refusing the union's, the
7 Charging Party's demand for recognition. There are certain
8 Board and Court decisions which seem to rely on what you said,
9 Mr. Somers, is subjective content of a man's mind. While I
10 personally disagree with those decisions, I am afraid that the
11 Board and the Court make the law in this field and not myself.

12 My personal feeling is that that particular item should
13 be determined based on the objective evidence of what was done
14 and said and not what was held in a person's mind. Now, is
15 that the reason for your question?

16 MR. MARROW: That was the basis, but it was my understand-
17 ing that this was communicated to others, so it wasn't some-
18 thing that remained in his mind.

19 TRIAL EXAMINER: This witness has not testified -- and you
20 gentlemen can set me straight -- this witness has not testified
21 to communicating this particular point of view to anyone other
22 than this attorney.

23 MR. MARROW: Except that ---

24 MR. SOMERS: Except in an area which was prohibited from
25 testimony.

1 TRIAL EXAMINER: What's that?

2 MR. SOMERS: The NLRB.

3 MR. MARROW: Mine goes more immediate than that, and that
4 is the issue as to what was said by the various people at these
5 conferences or meetings in June shortly after the demand was
6 made. I think when the record is complete, we have to read
7 one against the other and when credibility is resolved ---

8 TRIAL EXAMINER: That is another matter. You may ask me
9 to draw an inference. I may or may not draw it. But before
10 I get too far off the track, Mr. Somers, I don't ever recall
11 ruling in accordance with the statement you just made. I
12 ruled that I was not going to take evidence as to what were
13 the statements made or what were the statements by a Board
14 agent to Respondent or anybody else with respect to the ques-
15 tion of a contract bar. I don't remember going beyond that.

16 MR. SOMERS: It was my understanding your ruling pertained
17 to that meeting and the discussion concerning the contract bar.
18 If I am incorrect in this ---

19 TRIAL EXAMINER: I am glad that it's come up. There
20 wasn't anything that I recall to this effect in your offer
21 of proof.

22 MR. SOMERS: I'm sure that there was, there in fact was.

23 TRIAL EXAMINER: As to this witness' statement to some-
24 body in that meeting that he was surprised that the Distillery
25 Workers Union had made a demand or filed a petition?

1 MR. SOMERS: There was a statement made that the company
2 was of the belief that there was an existing contract bar.
3 That is my point. This was presented by Mr. Weschler and Mr.
4 Adinolfi when they presented the 1960 contract to Mr. Quarles
5 at the NLFB meeting.

6 MR. FEINGOLD: Are we going off on another tract again?

7 TRIAL EXAMINER: No, I don't think so.

8 MR. SOMERS: You don't think so?

9 TRIAL EXAMINER: That we are going off on another tract.
10 I will let all the parties litigate objective evidence which
11 may go to the point of the company's good or bad faith in
12 refusing to recognize the Charging Party Union. The question
13 before me at the present moment is whether or not I permit
14 interrogation into the mental processes.

15 MR. SOMERS: I will withdraw my --- Well, I am still not
16 clear as to where we stand with regard to the testimony con-
17 cerning the NLFB meeting. I think this has now become extremely
18 crucial, if I understand your ruling. Do I understand your
19 ruling to be that you would not accept evidence as to Mr.
20 Weschler's remark to the Board agent asserting a contract bar?

21 MR. MARROW: Wasn't this contained in the offer of proof?

22 MR. SOMERS: That's my understanding, but I wanted to
23 know whether ---

24 TRIAL EXAMINER: Gentlemen, I don't know how I expressed
25 it and maybe I expressed this in too broad a fashion. The point

1 I am not going to litigate is the advice given to the Respondent
2 by the Board agent as to the contract bar issue.

3 Now, if there is anything else in that meeting that was
4 or is relevant to any issue in the hearing, I will hear it.

5 MR. SOMERS: Well, now I am in a position I have to have
6 the last question readback with regard to --- I would like to
7 have the last question before we went into that session in
8 which it was decided what was going to be taken and was not.
9 I am not sure whether that question, whether that point is
10 in evidence or not.

11 TRIAL EXAMINER: Which point?

12 MR. SOMERS: The session of the contract bar before Mr.
13 Quarles at the NLRB.

14 TRIAL EXAMINER: There is no evidence. I will tell you
15 this right now. There is no evidence in the record at all
16 with respect to the conference at the National Labor Relations
17 Board in Boston, and you may operate on that assumption.

18 MR. SOMERS: Well then, I would like to recall the witness
19 for direct examination on this particular point.

20 TRIAL EXAMINER: I won't let you interrupt the cross-
21 examination. You will have an opportunity to question him, and
22 I will have an opportunity to rule on the questions.

23 Gentlemen, let me get to the point that is presently of
24 concern. My inclination, gentlemen, is to permit the present
25 question. That constitutes a reversal of my decision, and I

1 am doing it on the basis that there may be a relevance to good
2 or bad faith, and I am particularly doing it on the basis that
3 the inquiry relates to an objective fact, a statement made by
4 this witness, and doesn't involve a pure request for an unex-
5 pressed mental condition. I am not inclined to go that far.
6 Maybe one of you can persuade me. All right, let's get the
7 witness back.

8 Mr. Somers, if you misunderstood my previous ruling, I am
9 sorry. At least we had this opportunity of straightening it
10 out.

11 (The witness resumed the stand.)

12 TRIAL EXAMINER: Mr. Lentz, I ruled that you should answer
13 the last question, but since it's been so long, I am going to
14 have Mr. Marrow repeat it.

15 Q (By Mr. Marrow) Prior to our going off the record, Mr.
16 Lentz, you related in some detail what you said to the sales-
17 men after putting these hypothetical situations as to what your
18 feelings were as to their attitudes toward the company in vari-
19 ous other matters.

20 TRIAL EXAMINER: Do you want that reread to you?

21 THE WITNESS: Please.

22 TRIAL EXAMINER: Will you reread to the witness the same
23 answer that you read a little while ago.

24 THE WITNESS: I don't need my answer but just the question.

25 TRIAL EXAMINER: All right, go ahead, Mr. Marrow.

1 Q (By Mr. Marrow) At the time when you indicated that you
2 on June 8 was surprised to receive a demand letter from the
3 Distillery Workers, are these the same thoughts that were in
4 your mind as you expressed them at this meeting to the sales-
5 men?

6 A Similar, yes. I could tell you more.

7 Q What is it that you want to add?

8 A We had no expression from the men or individually or from
9 the Association of their unhappiness or discontent, and there-
10 fore, I was surprised.

11 Q And is it your belief and feeling that some disgruntled
12 individual had prompted this action?

13 A Pardon me?

14 Q Was it your feeling or belief that one or more disgruntled
15 individuals, disgruntled salesmen prompted this action?

16 MR. SOMERS: Objection. I don't think this follows.

17 TRIAL EXAMINER: Objection overruled.

18 THE WITNESS: Probably my feeling that some outside in-
19 fluence had misguided them.

20 Q (By Mr. Marrow) You didn't think that this was the action
21 of any of your employees at that time?

22 A That what was the action?

23 Q This demand letter and everything that went with it?

24 A Will you repeat the question?

25 MR. MARROW: Would you read the question back?

1 (The pending question was read by the Reporter.)

2 THE WITNESS: It's hard to believe that that was so.

3 Q (By Mr. Marrow) Did you make any effort to communicate
4 with the Distillery Workers Union at that time?

5 A No.

6 Q Now, I think all along we have been talking about one of
7 the meetings of the sales group that was held after the NLRB
8 Hearing and before the election, is that correct?

9 A Pardon me?

10 Q I think the testimony for the past half hour or so is
11 related to one of the meetings that was held after the Boston
12 Hearing and before the election on July 21?

13 A I believe so, yes.

14 Q And you have told us your expressions to the employees
15 at that time, the salesmen?

16 A Some of them, yes. That is all I can recall at the pre-
17 sent time.

18 Q Now, do you recall whether you made any minutes or any
19 notes at that meeting?

20 A I made a few notes before the meeting, yes.

21 Q And was this true in each instance when you addressed the
22 salesmen during this period?

23 A I made a few notes of things that I wanted to discuss.
24 yes.

25 MR. FEINGOLD: I don't think that is responsive to the

1 question.

2 TRIAL EXAMINER: It seems to me to be.

3 MR. MARROW: I thought it was.

4 MR. FEINGOLD: I thought you asked for each meeting?

5 MR. MARROW: I thought it was a general statement of what
6 he did at each meeting.

7 Q (By Mr. Marrow) If I am wrong, correct me, that each time
8 you addressed the salesmen you made a few notes and referred
9 to those notes in connection with remarks that you made, is
10 that right?

11 A Yes, sir.

12 Q Now, your father spoke on one or two occasions. Do you
13 know if he had any notes that he used when he spoke to the men?

14 A I believe so.

15 Q Now, during your preparation for this hearing, did you
16 have occasion to refer to any of those notes?

17 A The notes of the meetings that I addressed?

18 Q Yes.

19 A I may have looked at them in a perusal of any papers that
20 I had in reference to this whole situation. I didn't make
21 specific references to these, no.

22 Q Did you attempt to refresh your recollection as to what
23 took place at these meetings?

24 A No.

25 Q I take it your testimony today is the first oral recollect-

1 tition since you made these remarks back in July of 1967?

2 A They were important meetings, and I had some vital things
3 to say, and I remembered most of my remarks.

4 Q And you didn't go over and discuss these meetings with
5 your counsel in connection with the preparation of this case?

6 A No.

7 Q In that same regard, did you review or discuss with your
8 counsel any of the negotiating meetings that you have told us
9 about prior to coming to this hearing?

10 A Yes.

11 Q So in that area, you did prepare, so to speak?

12 A I didn't prepare. I reviewed what the history was.

13 Q Did you obtain the papers and documents that the company
14 had in connection with those proceedings in order to review?

15 A What papers or documents are you referring to?

16 Q Well, there have been a number of exhibits you have iden-
17 tified during your direct examination that you stated were part
18 of these negotiations, for instance, the 1960 contract, the
19 1956 minutes, or memos.

20 A I don't remember details of them. I just recall various
21 segments of them, having referred to them through the years.

22 Q I take it to be your testimony that you did not review
23 those documents in this connection?

24 A I saw some of them.

25 Q But not all of them?

1 A Right.

2 Q Do you recall which ones you saw prior to this hearing or
3 during the course of this hearing?

4 A Well, the 1956 memo is the oldest, one of the oldest
5 written documents. I have looked at that to refresh my memory

6 Q Do you recall where and when you looked at that?

7 A No.

8 Q Was that prior to the opening of this hearing or during
9 this hearing?

10 A Prior to the hearing, I believe.

11 Q Now, following the election, I believe you started to --
12 Perhaps through a misunderstanding as to the question -- testify
13 with respect to a meeting you held after the election, do you
14 recall? I think you started to state, perhaps misunderstand-
15 ing my question, that there was a meeting after the election
16 and that the matter was settled and something to that effect?

17 A We have been talking about several meetings. I don't
18 know which one you are referring to.

19 Q Tell us the very first meeting that you recall after the
20 July 21st election.

21 A One in which I referred to the fact that a majority of
22 the employees had a secret election and had volunteered their
23 free choice for the Association and talked about the fact that
24 a petition had been filed with the NLRB pursuant to that.

25 Q This was after the election?

1 A Yes.

2 Q Was that, incidentally, right after the election, if you
3 recall?

4 A Probably soon after.

5 Q Was anything said about a contract at that first meeting?

6 A I referred to the 1960 contract and one of the meetings
7 in which I explained ---

8 MR. SOMERS: Are we referring to a meeting after the
9 NLRB election?

10 Q (By Mr. Marrow) After the NLRB election.

11 A I remember I referred to the 1960 contract in one of the
12 meetings, and I don't recall which one.

13 Q What reference did you make to the contract that you
14 recall?

15 A The fact that we had the contract in force, the 1960
16 contract in force probably related at that time, oh, must have
17 been before the election that I related about the 1960 con-
18 tract, that although we had an existing contract with the
19 Association, that despite that we were being directed by the
20 NLRB to hold an election.

21 Q Well, was anything said about the contract after the
22 election?

23 A I don't believe so.

24 Q You do recall during your attendance in this hearing that
25 there has been some testimony about negotiations, I believe

1 starting at the Parma Restaurant?

2 A Yes, I thought you were referring to the 1960 contract.

3 Q No, I have taken you up to the election on July 21. Now,
4 at or about that time was anything said with respect to nego-
5 tiations or a new contract?

6 A Yes.

7 Q Can you tell us what was said and by whom and when and
8 where?

9 A We had a discussion about coming together to negotiate
10 another contract or another agreement.

11 Q And when did that discussion take place, do you recall?

12 A Sometime after the election, I don't know.

13 Q Now, you recall that prior to the election there were
14 some negotiations with the truck drivers?

15 A Yes.

16 Q And did you participate in those negotiations?

17 A Yes.

18 Q And isn't it a fact an agreement was reached, a written
19 agreement, with the truck drivers prior to the election on
20 July 21?

21 A Somewhere during that time, yes.

22 Q Now, with the date of July 21st in mind, which is the
23 date of the NLRB election, can you give us your best recol-
24 lection as to when these discussions took place regarding the
25 negotiations for the salesmen?

1 If I can refresh your recollection, the day of the elec-
2 tion was a Friday.

3 A Shortly after the election.

4 Q That same day?

5 A No.

6 Q The following day?

7 A No, I would say --- I don't know, oh, a week or so.

8 Q Did you participate in this discussion?

9 A The discussion about imminent negotiations?

10 Q Any negotiations.

11 A Yes.

12 Q And who else participated?

13 A My father.

14 Q Anyone else?

15 A And Al Paul.

16 Q Can you remember now where that meeting took place?

17 A I really couldn't give you an accurate description of the
18 meetings that took place before the negotiations. I know that
19 a negotiating committee was selected by the Association and
20 that we came together.

21 Q That is all you can accurately recall? You do recall
22 that you came together and who was present at that session?

23 A Yes.

24 Q And that was at the Parma Restaurant?

25 A Yes.

1 Q And that has been described a number of times during this
2 proceeding?

3 A Right.

4 Q Now, following the Parma Restaurant --- Oh, incidentally,
5 Mr. Sandler was present at that meeting?

6 A Which meeting?

7 Q The Parma Restaurant meeting.

8 A Yes.

9 Q And he was sitting with what might be described the
10 management side of the table?

11 A No. There was no specific seating at that meeting. As
12 I recall when we walked into the room, a small room which
13 seated anywhere from 10 to 12 people, I believe the negotiat-
14 ing committee was already there when we walked in.

15 Q When you walked in, did your group include Mr. Sandler?

16 A I don't recall whether he came with us or not.

17 Q Who invited him to participate?

18 A I don't know specifically. I guess myself. I guess I
19 did. He was there and others were there who were not specifi-
20 cally negotiating.

21 Q But the fact is that he was there either at your request
22 or on your behalf?

23 MR. SOMERS: Objection, double question.

24 TRIAL EXAMINER: All right. That is sustained. Rephrase
25 it.

1 Q (By Mr. Marrow) Was he there at your request, Mr. Lentz?

2 A Yes.

3 Q And was he there acting or participating on behalf of
4 the company?

5 A No.

6 Q Can you tell us who he was participating for?

7 A He wasn't participating. I don't believe he said a word
8 throughout the meeting, and that could be checked by everyone
9 participating.

10 MR. PEINGOLD: I move to strike that out.

11 TRIAL EXAMINER: No, let's go on.

12 Q (By Mr. Marrow) Now, following the Parma Restaurant
13 meeting, you participated in negotiations at the company the
14 following day?

15 A Yes, sir.

16 Q And those negotiations, according to the testimony that
17 we have all heard, went on for most of that Friday?

18 A I would like to take you back for a moment.

19 Q Back to where?

20 A The meeting at the Parma. Actually it was not a negotiat-
21 ing session. It was the session at which we heard points
22 which the Association wanted to discuss, points apparently
23 that they had received from the members of the Association,
24 and we indicated at that time that we would make a considera-
25 tion and make a determination subsequent to that meeting.

1 Q And did you in turn or in time make a consideration of
2 their request?

3 A Yes.

4 Q And when was that?

5 A That would be the following day, Friday.

6 Q That was Friday, and there were some meetings or dis-
7 cussions on Friday with respect to these requests?

8 A Yes, sir.

9 Q How long did that last?

10 A Oh, a few hours, not too long.

11 Q Do you recall any meeting with the salesmen prior to the
12 start of this consideration of the Association's requests?

13 A I don't recall.

14 Q Do you recall at any time on that day reading to the
15 group of salesmen from a document certain terms and conditions
16 of employment?

17 A Pardon me?

18 Q Do you recall on this Friday reading to the group of
19 salesmen from any document certain terms and conditions of
20 employment?

21 A Before the negotiations?

22 Q Before or after, during?

23 A I believe that I read after the negotiations had been
24 completed and an agreement reached the consensus which had
25 been reached, the agreement that had been reached and ratified

1 apparently by the membership.

2 Q When was that?

3 A After the negotiations.

4 Q On Friday? What time of day?

5 A I think it was in the afternoon.

6 Q Does that refresh your recollection as to how long the
7 negotiations lasted?

8 A No, a few hours.

9 Q When did they start?

10 A I don't remember. I only remember times that are impor-
11 tant to me. I don't remember other things that are insignifi-
12 cant. I don't think the times are significant.

13 Q You say the time is insignificant. You are referring to
14 the time only and not the matters discussed?

15 A The time of day.

16 Q Do you recall that there were meetings back and forth that
17 day?

18 A (Nodded head.)

19 Q What did you read from, did you have notes or some sort
20 of draft of an agreement prepared?

21 A I read from notes that I had made, we had made during
22 the course of the negotiations, or notes that I had made the
23 previous evening at the Parma.

24 Q Did anything happen after you read your notes or minutes?

25 A To the men?

1 C Yes.

2 A A general air of relief that everybody had come to an
3 agreement and everybody was fairly joyful.

4 Q This was on Friday?

5 A Right.

6 Q And they all went home?

7 MR. SOMERS: Objection.

8 THE WITNESS: I don't know where they went.

9 Q (By Mr. Marrow) The meeting broke up at that point?

10 A Yes, sir.

11 Q What happened with the notes and minutes that you read
12 from?

13 A Well, they were consolidated. Myself and Stanley con-
14 solidated them to make sure we had a meeting of the minds on
15 what had been agreed to and the language and so forth and
16 formed the basis of the new contract.

17 Q Now, were you present when the salesmen took some action
18 with respect to the minutes or agreement that you had read
19 that afternoon?

20 A No. Any action that they took, they took in a meeting of
21 their own.

22 Q When did that meeting take place, if you know?

23 A No, we had negotiations with their committee and they took
24 back proposals or agreements that they had initially made with
25 us back to the general membership, and I assume it was ratified

1 by the membership. We weren't present when they talked to these
2 people.

3 Q Did someone tell you that it was ratified?

4 A Yes.

5 Q Who?

6 A The committee. Al Paul talked for the committee. He is
7 the President of the Association.

8 Q And on Friday he came back together with the other mem-
9 bers of the committee and said, "We ratify the agreement"?

10 A Words to that effect, yes.

11 Q What were the words to that effect?

12 A That the membership of the Association had agreed to their
13 proposals.

14 Q And do you recall what the proposals were that were agreed
15 to?

16 A We would pay, the company would pay for half the cost of
17 C.M.S. and Blue Cross, that there would be in addition to the
18 earnings that they already were receiving for vacations, they
19 would receive something else.

20 Q Do you recall what that was?

21 A I think it was a hundred dollars for the vacation period.

22 Q Mr. Lentz, I think you were telling us your recollection
23 of the terms that were agreed to on Friday at this meeting.

24 You had mentioned the C.M.S. and vacation?

25 A Yes.

1 Q I think you just were telling us what the vacation was,
2 do you recall?

3 A I did tell you.

4 Q Anything else?

5 A When new lines were brought into the House that we would
6 explain to the salesmen the disposition of same and read the
7 disposition of same. Any new accounts assigned --- Any new
8 accounts brought to our attention would be assigned to the
9 salesmen.

10 Q Any other points that you recall?

11 A At this point, I can't recall any.

12 Q Do you recall anything about the duration or length of
13 this agreement?

14 A Oh, yes, the duration would be three years.

15 Q Any other terms that you can recall at the moment?

16 A The other terms, this would be in the form of a contract
17 between the company and the Association, work rules, and terms
18 of employment, and so forth, and holidays.

19 Q Was that told by you to the men on this occasion that you
20 would incorporate these things into an agreement?

21 A I believe so.

22 Q Now, just to finish this thought, after you told the men
23 what the agreement was, you and Mr. Goldstein then got together
24 and reduced this to more formal writing?

25 A We reduced our notes to a form, reduced our notes so that

1 our language was the same, yes.

2 Q And did you do anything else on that day with respect to
3 the contract?

4 A Just related the changes to the men.

5 Q Related?

6 A Related the changes to the men orally.

7 Q You then went back again to the group?

8 A No, we just related to them, once to all of them together.

9 Q That was it?

10 A Yes.

11 Q Then what happened?

12 A Then what happened that day?

13 Q Yes, if anything.

14 TRIAL EXAMINER: Wait, I am not going to go back over
15 everything we have gone over already.

16 MR. MARROW: After he talked to the men.

17 TRIAL EXAMINER: He has already testified to that.

18 MR. FEINGOLD: I thought the question was what else did
19 he and Mr. Goldstein do that day.

20 TRIAL EXAMINER: Well, he has testified to that. Is
21 there anything else to which you want to call his attention?

22 Q (By Mr. Marrow) Did you then prepare a written agree-
23 ment, a finished contract?

24 A Yes.

25 Q And when was that done?

1 A Within a week after that.

2 Q Within a week?

3 A I believe so.

4 Q Did you have anything to do with the drafting of that
5 formal document?

6 A Yes.

7 MR. MARROW: This might be a good place to break off.

8 TRIAL EXAMINER: We will be in adjournment until 9:30
9 tomorrow morning.

10 (Whereupon, at 5:40 p.m., the hearing in the above-
11 entitled matters was adjourned until 9:30 a.m., Friday,
12 February 16, 1968, the same place.)

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1 worked from any standard agreement or contract in drafting this?

2 MR. SOMERS: Objection.

3 TRIAL EXAMINER: Sustained.

4 MR. MARROW: I asked him if he knew.

5 TRIAL EXAMINER: You asked him if he knew the attorneys
6 had used other contracts in developing this contract, and I
7 sustained it because it doesn't seem to make any difference.

8 Q (By Mr. Marrow) Do you know what material, if any, Mr.
9 Adinolfi and Mr. Weschler worked from in drafting this agree-
10 ment?

11 MR. SOMERS: Objection. Same question.

12 TRIAL EXAMINER: Isn't it the same question? The same
13 ruling.

14 Q (By Mr. Marrow) Now, at any time, Mr. Lentz, did you read
15 or show to the employees General Counsel's Exhibit 9 prior to
16 August 7, 1967?

17 A Which exhibit are you referring to?

18 Q The one I just showed you, the contract of July, 1967.

19 A The entire document?

20 Q Either the entire document or parts of it.

21 A I talked about the part --- Yes, the parts we had agreed
22 to which are the crucial areas, part of the negotiations, yes,
23 I did.

24 Q When was that?

25 A After our agreement with the committee and the membership

1 of the Association.

2 Q I have more specific reference to a time when this agree-
3 ment that you have identified was actually in its present form.
4 Did you have occasion to discuss that with the employees?

5 A I believe that was shown to them by Adinolfi prior to
6 their signing it.

7 Q Now, do you recall ever telling the assembled employees --
8 that is, the salesmen -- that the company could not sign Gen-
9 eral Counsel's Exhibit 9?

10 A Yes.

11 Q And when was that?

12 A Early in August.

13 Q Could you tell us the best of your recollection what you
14 said at that time?

15 A I said that, "As you know, we had bargained, negotiated
16 in good faith and that in view of the provisions which were
17 current, we were advised by our attorney not to sign this agree-
18 ment at this time, but that we would place in execution the
19 items therein."

20 Q Place in execution, you mean put into effect?

21 A Put into effect.

22 Q Did you in fact put the items into effect?

23 A Yes, sir.

24 Q At or about that same time?

25 A Yes, sir.

1 Q Now, any time prior to July 21, 1967, and between that
2 date and June 6 or 7 or 8, 1967, did you ever tell your em-
3 ployees, your salesmen that you would respect their wishes no
4 matter what union was selected in this representation proceed-
5 ing?

6 A With respect to their wishes? I don't recall using that
7 kind of language, and I don't know what you are referring to.

8 Q Well, did you ever tell the employees that no matter what
9 the outcome of the election was, you would go along with what-
10 ever union was selected or certified as a result of the election?

11 MR. SOMERS: I am going to object. I think we have been
12 over this ground quite thoroughly with Mr. Marrow on cross-
13 examination.

14 TRIAL EXAMINER: Overruled.

15 THE WITNESS: I don't recall using that language, but I
16 may have stated it.

17 Q (By Mr. Marrow) What do you recall stating in that regard?

18 A I don't recall.

19 Q Now, you testified that you met with Mr. Adinolfi and Mr.
20 Weschler sometime before August 7, 1967. After that date, did
21 you have anymore meetings with Mr. Adinolfi?

22 A No, sir.

23 Q During the preparation of this proceeding, did you have any
24 meetings with Mr. Adinolfi other than in the hearing room here?

25 A Preparation of what?

1 A He has visited, yes.

2 Q Did you visit his home?

3 A Yes.

4 MR. SOMERS: Objection. What difference does it make?

5 Q (By Mr. Feingold) Do you know his family well?

6 A I do now.

7 Q Did you know his family well in 1952?

8 A No.

9 Q Didn't know them at all?

10 A Not all of them, no.

11 Q Did you know Walter Schatz in 1952?

12 A Yes.

13 Q Did you know his father in 1952?

14 A I don't believe so.

15 Q Do you know whether your father knew the Schatzes?

16 A I don't know at that time.

17 Q Did your company ever do any legal business with Schatz &

18 Schatz?

19 MR. SOMERS: Objection.

20 TRIAL EXAMINER: Only as to form. Will you limit that as

21 to a certain time or times?

22 Q (By Mr. Feingold) At any time from 1952 to the present

23 date, did your company have any business with the firm of

24 Schatz & Schatz?

25 A Yes.

1 Q And when was that, if you will tell us?

2 A The only time I can specifically recall is the current,
3 in 1966, 1967.

4 Q They took care of personal business for your firm?

5 A Yes.

6 Q What kind of business was that?

7 A In connection with the reorganization.

8 Q Of the company?

9 A Yes.

10 Q Do you know whether your father ever had business with
11 Schatz & Schatz, legal business?

12 A He may have, but I can't recall specifically.

13 Q Did the Schatzes ever come to the Brescome premises to
14 your knowledge?

15 MR. SOMERS: Objection.

16 TRIAL EXAMINER: If you limit that to 1952 or thereabouts.

17 Q (By Mr. Feingold) Since 1952.

18 TRIAL EXAMINER: Mr. Feingold, unless I am mistaken, this
19 can only be relevant insofar as it relates --- No, I am sorry.
20 If it relates to any time between 1952 and to date.

21 Q (By Mr. Feingold) 1952 or around that time, either before
22 or after September, 1952, did Brescome Distributors have any
23 business, legal business with the firm of Schatz & Schatz?

24 TRIAL EXAMINER: That wasn't the question. The question
25 as whether or not any members of the firm came to the Brescome

1 premises.

2 MR. FEINGOLD: I am sorry. Thank you for your correction.

3 THE WITNESS: When?

4 Q (By Mr. Feingold) Any time from the summer of 1952 until
5 1967?

6 A 1967, yes.

7 Q How about 1966?

8 A Perhaps the latter part.

9 Q How about 1965?

10 A No.

11 Q You are talking from your own recollection, is that
12 correct?

13 MR. SOMERS: Objection.

14 Q (By Mr. Feingold) Is that correct?

15 A I am stating the facts.

16 TRIAL EXAMINER: Mr. Feingold, there is one point in here
17 that bothers me. There is some indication in the record that
18 Mr. Adinolfi is no longer connected with Schatz & Schatz. I
19 don't know whether this is specifically so, but I remember a
20 different firm name.

21 MR. FEINGOLD: That is argument. I submit I am allowed
22 to adduce these facts.

23 TRIAL EXAMINER: Well, Mr. Feingold, I am interested only
24 in facts. I am not interested in what Schatz & Schatz does if
25 Schatz & Schatz is not a representative of the Association, and

1 there seems to be a missing link.

2 MR. FEINGOLD: I am trying to explore this.

3 TRIAL EXAMINER: I would like to have that particular
4 foundation laid first.

5 MR. FEINGOLD: What foundation is that?

6 TRIAL EXAMINER: Whether Schatz & Schatz was the repre-
7 sentative of the Association at any time after 1952, which is
8 the only date in which that has been established.

9 Q (By Mr. Feingold) Was Schatz & Schatz the attorneys for
10 the Association from 1952, in 1952?

11 A Yes.

12 Q In the preparation of this case, did you consult with
13 your father or with Stanley Goldstein or the records of your
14 firm to see whether your firm did any business with Schatz &
15 Schatz in 1952 and subsequent years?

16 MR. SOMERS: Objection.

17 TRIAL EXAMINER: Sustained.

18 MR. FEINGOLD: On what basis? This is cross-examination.

19 TRIAL EXAMINER: The objection to the question is sus-
20 tained. It does not seem to have any relevance or materiality.
21 It's a little too remote on credibility.

22 MR. FEINGOLD: Whether the records show, whether he check-
23 ed the records to determine whether Schatz & Schatz received
24 any compensation or represented Brescome Distributors?

25 TRIAL EXAMINER: Mr. Lentz?

1 THE WITNESS: Yes, sir.

2 TRIAL EXAMINER: As far as you know from your knowledge,
3 can you tell me for how long a period it was represented to
4 you that Schatz & Schatz represented the Association?

5 MR. FEINGOLD: I didn't hear the question. May I have
6 the question, please?

7 TRIAL EXAMINER: Would you read the question.
8 (The pending question was read by the Reporter.)

9 THE WITNESS: As far as the information that I had learned,
10 it was from 1952 until Joseph Adinolfi severed his rela-
11 tions with Schatz & Schatz several years ago.

12 TRIAL EXAMINER: Do you remember approximately when that
13 was?

14 THE WITNESS: Five years.

15 TRIAL EXAMINER: That would make it somewhere in 1962 or
16 1963?

17 THE WITNESS: Early 1960's, yes. I don't know exactly
18 how long it was.

19 TRIAL EXAMINER: Now, Mr. Feingold.

20 MR. FEINGOLD: Would you bear with me?

21 TRIAL EXAMINER: I was going to state that if you limit
22 your question to that period, I would appreciate it.

23 MR. FEINGOLD: You mean I am bound by his answer that it
24 was 1962?

25 TRIAL EXAMINER: Unless you lay a foundation for a further

1 interrogation. You haven't laid a foundation. That is the
2 problem.

3 MR. FEINGOLD: I don't know what foundation I can lay with
4 this witness. I intended to produce this testimony through
5 Mr. Adinolfi. I don't know whether Mr. Adinolfi will return
6 to this hearing. Mr. Somers says he doesn't think so in an
7 informal conference.

8 MR. SOMERS: I don't speak for Mr. Adinolfi.

9 TRIAL EXAMINER: I only deal with the problems as I have
10 been. At the moment, the ruling is in accord with the present
11 state of the record.

12 Q (By Mr. Feingold) Now, the firm of Schatz & Schatz is at
13 750 Main Street, is that correct?

14 A I believe so.

15 Q And Mr. Adinolfi is at One Constitution Plaza?

16 MR. SOMERS: What period are you talking about?

17 MR. FEINGOLD: Well, I withdraw that question.

18 Q (By Mr. Feingold) Mr. Adindfi was an associate of the
19 law firm of Schatz & Schatz, is that right?

20 A He was.

21 Q And to your knowledge, from there Mr. Adinolfi moved to
22 One Constitution Plaza, is that correct?

23 A I don't know whether that is the exact address, but he
24 moved to Constitution Plaza, yes.

25 Q Upon leaving Schatz & Schatz?

1 A I believe so.

2 Q Now, when was it that Schatz & Schatz was retained by
3 Brescome Distributors for this matter or reorganization of
4 your company?

5 A I guess it began in 1966.

6 Q What time in 1966?

7 A Probably the latter part.

8 Q Well, could you be more specific?

9 A No.

10 Q The fall, would you say the fall? The summer?

11 A I don't recall.

12 Q Do you have any records here that would show ---

13 A No.

14 Q Any correspondence?

15 A No, I don't.

16 Q Well, isn't it a fact that Mr. Adinolfi was still in the
17 office of Schatz & Schatz in 1966?

18 A I believe it was several years since he has severed his
19 relations.

20 Q And moved out of the office?

21 A When he severed his relationship, he moved out of the
22 office.

23 Q And according to your testimony, that whenever the sales-
24 men ran their Association meetings after that, they held them
25 at Mr. Adinolfi's office, is that correct?

1 the man who formerly covered that territory work with him.

2 Q Now, you stated that Mr. Amoroso may have or does have
3 a higher expense account than the other salesmen. Do you know
4 what the reason is or is there any particular reason?

5 A He works with other salesmen, and also he spends a great
6 deal of his time on wine tastings, and there were expenses in-
7 curred with that.

8 Q You stated that Mr. Amoroso's weekly pay averaged approxi-
9 mately \$75 more than the other wine men. Do you know if there
10 was that difference when Mr. Amoroso was hired?

11 A When he was hired, the difference was less.

12 Q Do you recall approximately what it was?

13 A Perhaps 50.

14 MR. MARROW: I would assume you mean \$50?

15 THE WITNESS: Yes, sir.

16 Q (By Mr. Somers) And you recall your first discussion
17 with Mr. Brennan after having received the demand letter?

18 A Yes.

19 Q Do you recall what the method of communication was at
20 that time?

21 A A telephone call.

22 Q How many times were you in contact with Mr. Brennan, do
23 you recall?

24 A Several.

25 Q What was the method of communication on those several

1 Q Could you state your name and address for the record?

2 A Bruno Golaski, 18 Broadview Lane, Warehouse Point,
3 Connecticut.

4 Q And by whom are you employed?

5 A Brescome Distributors, Inc.

6 Q And you are a salesman for Brescome?

7 A Yes.

8 Q Now, Mr. Golaski, are you familiar with an attorney by
9 the name of Joseph Adinolfi, Jr.?

10 A I am.

11 Q Do you recall being in Mr. Adinolfi's office sometime in
12 July of 1967 with Mr. Adinolfi?

13 A I do.

14 Q And do you recall ever being there with just the two of
15 you in the office?

16 A Yes.

17 Q Now, do you recall having signed anything at that time?

18 A Yes, I do.

19 MR. SOMERS: I would like to have this marked Respondent's
20 next in order.

21 (The document above-referred to
22 was marked Respondent's 51 for
identification.)

23 Q (By Mr. Somers) Do you recall what that document was that
24 you signed in Mr. Adinolfi's office?

25 A Not fully. It was something about the Association. I

1 don't know the content of it, but it was about the Association.

2 Q I show you Respondent's 51 for identification. Do you
3 recognize that?

4 A Yes.

5 Q And was that your signature?

6 A Yes.

7 Q And is the date written in your handwriting?

8 A Yes.

9 Q Now, there is printing at the top, "Bruno W. Golaski,"
10 is that your printing?

11 A I don't believe so.

12 Q But this is your signature?

13 A This is, yes, it is.

14 Q And the date written in there?

15 A That is correct.

16 Q Did you read it when you signed it?

17 A I read everything I sign.

18 MR. SOMERS: I would like to offer Respondent's 51 in
19 evidence.

20 MR. MARROW: May I see it?

21 (The document was handed to Mr. Marrow.)

22 MR. MARROW: No objection.

23 MR. FEINGOLD: May I have voir dire on this?

24 TRIAL EXAMINER: Yes.

25 VOIR DIRE

1 Q (By Mr. Feingold) Mr. Golaski, is this a photocopy that
2 you signed, a photocopy of the printing? Was it in this form
3 that you signed it?

4 A This is the paper that I signed.

5 Q You actually signed this?

6 A Yes, that is it.

7 Q Now, Adinolfi was present?

8 A Yes.

9 Q Nobody else?

10 A No. Some girl walked in and out. I assume it was his
11 secretary.

12 MR. FEINGOLD: No further questions.

13 TRIAL EXAMINER: Do you have a position?

14 MR. FEINGOLD: No objection.

15 TRIAL EXAMINER: Respondent's 51 is received.

16 (The document above-referred to,
17 marked Respondent's 51, was re-
ceived in evidence.)

18 MR. SOMERS: I have nothing further.

19 TRIAL EXAMINER: Mr. Marrow?

20 CROSS-EXAMINATION

21 Q (By Mr. Marrow) Mr. Golaski, you stated you were a sales-
22 man. Do you specialize in any product or product line?

23 A I specialize in Italian Swiss Colony. I am a wine sales-
24 man.

25 Q As distinguished from a liquor salesman?

1 MR. FEINGOLD: No further questions.

2 MR. SOMERS: Nothing further of this witness.

3 TRIAL EXAMINER: Mr. Marrow?

4 MR. MARROW: No further questions.

5 MR. FEINGOLD: No further questions.

6 TRIAL EXAMINER: Thank you, Mr. Golaski. Thank you for
7 your testimony.

8 (Witness excused.)

9 MR. FEINGOLD: I was going to subpoena you and you saved
10 a lot of time.

11 TRIAL EXAMINER: Off the record.

12 (Discussion off the record.)

13 TRIAL EXAMINER: On the record.

14 MR. SOMERS: I now call Mr. Maynard.

15 Whereupon,

16 LEO MAYNARD

17 was called as a witness by and on behalf of the Respondent and
18 having been previously duly sworn, was examined and testified
19 as follows:

20 TRIAL EXAMINER: Mr. Maynard, you realize that you con-
21 tinue to testify under oath.

22 THE WITNESS: Yes, sir, I do.

23 MR. SOMERS: Prior to going on with Mr. Maynard, I would
24 like to offer the document marked previously Intervenor's 3
25 for identification. We have discussed this and there wasn't

1 foundation in the record for this to be sufficiently identified.
2 This is Frank Smith's. I would like to have it marked as
3 Respondent's Exhibit.

4 (The document above-referred to,
5 marked Intervenor's 3, was remarked
6 Respondent's 54 for identification.)

7 TRIAL EXAMINER: Do you gentlemen have any objection to
8 the receipt of Respondent's Exhibit 54?

9 MR. MARROW: No objection.

10 MR. FEINGOLD: No objection.

11 TRIAL EXAMINER: Respondent's Exhibit 54 is received.

12 (The document above-referred to,
13 marked Respondent's Exhibit 54,
14 was received in evidence.)

15 DIRECT EXAMINATION

16 Q (By Mr. Somers) Mr. Maynard, do you recall a meeting or
17 discussion which you had with Mr. Adinolfi in Mr. Adinolfi's
18 office sometime in July of 1967?

19 A Yes, sir, I do.

20 Q Do you recall signing anything at that time?

21 A Yes, I did.

22 Q Do you recall what it was that you signed?

23 A Yes. It was my choice of the Brescome Association to
24 represent me at the election.

25 MR. SOMERS: I would like to have this marked Respondent's
next in order.

(The document above-referred to
was marked Respondent's Exhibit
55 for identification.)

Q (By Mr. Somers) Mr. Maynard, I show you what has been marked Respondent's Exhibit 55 for identification. Do you recognize that document?

A Yes, I do.

Q Is that your signature where it says, "Written signature"?

A Yes, it is.

Q Is that in your handwriting?

A Yes, it is.

Q Is the date written in your writing?

A Yes, it is.

Q And now do you see the name where it says "Witness"?

A Yes, I do.

Q Do you recall your signature being witnessed?

A Yes, it was.

Q Who was that?

A This lady. I don't remember who it was. I don't know
the person.

Q Was it a woman or man?

A I believe it was Mr. Adinolfi's secretary.

Q Now, do you recall this writing down at the bottom?

A No, sir, it wasn't there.

MR. FEINGOLD: May I see it?

Q (By Mr. Somers) Did you read this before you signed it?

1 A Yes, I did.

2 Q Now, you note that Respondent's 55 is a copy. Do you re-
3 call if in fact you signed an original of that?

4 A Would you repeat that, please?

5 Q You note that this is a copy, a photocopy?

6 A Yes.

7 Q Did you sign an original of that?

8 A Yes, I did.

9 Q And is this on or about the date you did sign it?

10 A Yes, it was.

11 MR. SOMERS: I offer Respondent's 55 in evidence.

12 MR. FEINGOLD: Could I have voir dire?

13 TRIAL EXAMINER: Yes.

14 VOIR DIRE

15 Q (By Mr. Feingold) This is not the paper you signed, is
16 it, Mr. Maynard?

17 A I signed the original.

18 Q This is a photocopy, July 14, 1967. I am pointing to
19 Respondent's 55 for identification. How long were you with
20 Mr. Adinolfi when this was signed?

21 MR. SOMERS: Is this a matter for voir dire or cross-
22 examination?

23 TRIAL EXAMINER: That question is subject to objection.
24 I sustain it. Is there any objection to it?

25 MR. MARROW: Has it been offered? I have no objection.

MR. SOMERS: Yes, I offer it.

TRIAL EXAMINER: Mr. Marrow?

MR. MARROW: No objection.

TRIAL EXAMINER: Mr. Feingold?

MR. FEINGOLD: No objection.

TRIAL EXAMINER: Respondent's Exhibit 55 is received.

(The document above-referred to, marked Respondent's 55, was received in evidence.)

MR. SOMERS: No further questions.

TRIAL EXAMINER: Mr. Marrow?

CROSS-EXAMINATION

12 Q (By Mr. Marrow) Mr. Maynard, you testified that this took
13 place in Mr. Adinolfi's office?

14 A yes sir

15 6 Do you recall what time of day it was?

16 I would now like to add some

17 Q Do you recall how you got to Mr. Adinolfi's office, whether
18 you were told to go there or whether you had an appointment,
19 what the circumstances were?

20 A I believe Mr. Adinolfi contacted me by phone

21 | P a g e

22

23 | Page

34 | Page

25 | P a g e

P R O C E E D I N G S

TRIAL EXAMINER BARBAN: On the record.

MR. SOMERS: Mr. Dressler please.

Whereupon,

FRED ARNOLD DRESSLER

was called as a witness by and on behalf of the Respondent,
and, having been duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

Q (By Mr. Somers) Mr. Dressler, will you state your
name and address for the record?

A Fred Arnold Dressler, 60 Seminole Circle in West Hartford,
Connecticut.

Q And who is your employer, Mr. Dressler?

A Mervyn Lentz, Brescome Distributors.

Q I see, and what is your position with Brescome?

A Salesman.

Q Now, are you familiar with the Brescome Distributors
Employees Association?

A Uh huh.

Q And are you familiar with an individual called Joseph
Adinolfi?

A Yes, I am.

Q And who is Mr. Adinolfi?

A Actually he is the lawyer for Brescome Distributors.

1 Q Do you recall having a meeting with Mr. Adinolfi at
2 Mr. Adinolfi's office?

3 A Yes.

4 Q And do you recall if anyone was present besides
5 you and Mr. Adinolfi at that meeting?

6 A At a certain meeting between me and Mr. Adinolfi, no.

7 MR. FEINGOLD: May we fix a time please?

8 Q (By Mr. Somers) Do you recall when this was?

9 A July 19, if I'm not mistaken.

10 Q Now, do you recall what happened at that meeting?

11 A Yes, I do.

12 Q Would you tell us?

13 A Well, he informed me that Brescome Distributors Union
14 for the salesmen-- there was the Brescome Union and an outside
15 union -- and he asked me if I would like to sign a certain
16 paper stating whether I would like to join the union or
17 not. In other words, it was yes or no. I had a choice.
18 Actually, it wasn't a choice in the way that I was forced
19 to----

20 MR. FEINGOLD: I move to strike that out.

21 TRIAL EXAMINER: All right, Mr. Dressler.

22 THE WITNESS: It was----

23 TRIAL EXAMINER: Just a moment. Now, let's limit yourself
24 to what Mr. Adinolfi said to you and what you said to him
25 and what was done. Take it easy and give me that conversation.

1 THE WITNESS: Okay. He had notified me that Brescome
2 Distributors had a union. He had asked me if I wanted
3 to join it or not.

4 Q (By Mr. Somers) Did you sign anything at that time?

5 A Yes, I did.

6 MR. SOMERS: I would like to have this marked
7 as Respondent's next in order.

10 (The document was handed to the Parties.)

11 Q (By Mr. Somers) Now, as the attorney for the Association
12 what did Mr. Adinolfi say to you about this?

13 a MR. FEINGOLD: I'm going to object to the form of the
14 question.

15 TRIAL EXAMINER: All right, I'll sustain the objection
16 as to the form.

17 Q (By Mr. Somers) I show you Respondent's 56. Do you recall
18 ever seeing that before?

19 A ub hub

20 || 8. What that?

21 MR. FEINGOLD: When you say "uh huh" please answer yes
22 or no.

23 THE WITNESS: Yes. I did see it before. I saw it
24 at the time. It was in Mr. Adinolfi's office.

25 (By Mr. Somers) Is that your signature?

1 A Yes, it is.

2 Q The date, is that in your writing?

3 A Yes, it is.

4 Q Is that Mr. Adinolfi's signature or do you know if
5 Mr. Adinolfi signed it at that time?

6 A Yes, He did sign it.

7 MR. SOMERS: I offer Respondent's 56.

8 MR. MARROW: No objeciton.

9 MR. FEINGOLD: No objection.

10 TRIAL EXAMINER: Respondent's 56 is received.

11 (The document above-referred to,
12 heretofore marked Respondent's
13 Exhibit No. 56, was received
14 in evidence.)

15 Q (By Mr. Somers) Did you read that before you signed it?

16 A Oh yes. He explained it to me.

17 Q What did he say?

18 A He told me that the Union---- I was new at the time,
19 and he explained to me this was the Brescome Dsitributors
20 Union. We had the Union among the salesmen, and he asked
21 me whether I would like to join or not. In other words,
22 it was my choice. My choice was yes. I signed the paper.
23 He signed also as a witness.

24 Q Did he say anything further about the Association?

25 A No, he just mentioned this would be the sole bargaining
agent for the salesmen, that that's what it was.

32 1 A The same address, 97 Cumberland Street, Hartford.
 2 Q Now, do you recall sometime in the summer of 1957
 3 being asked to witness anything that Mr. Sposito signed?

4 A Yes

5 || o And do you recall what that was?

6 || A To witness his signature.

7 MR. FEINGOLD: I'm going to object to the introduction
8 of this paper this way.

9 MR. SOMERS: I would like to have this marked.

10 TRIAL EXAMINER: Well, counsel may have it marked,
11 and we will discuss it.

12 (The document above-referred to
13 was marked Respondent's Exhibit
No. 57 for identification.)

14 (The document was handed to the parties.)

15 Q (By Mr. Somers) Miss Sposito, do you recognize this
16 document?

17 A Yes

18 || o And is your signature on there?

19 A Yes sir

29 S And do you recognize the other signature on there?

31 || A Yea

28 || 2 Who is that?

226 My brother's

Q. And you're familiar with his signature?

25 A Ob Yes

1 Q And the date?

2 A (Nodding head.)

3 Q Do you recall if your brother's signature and the
4 date were down there when you signed it?

5 A Oh yes.

6 MR. SOMERS: I would like to offer Respondent's 57
7 for identification.

8 MR. FEINGOLD: Objection.

9 MR. SOMERS: I would like to be heard on this.

10 TRIAL EXAMINER: Miss Sposito, was your brother's
11 signature put on this document in your presence?

12 THE WITNESS: Oh yes.

13 TRIAL EXAMINER: You actually saw it signed?

14 THE WITNESS: Yes.

15 TRIAL EXAMINER: First, Mr. Somers, I better hear
16 from you as to why this is relevant and material and
17 admissible. I haven't looked at it. I don't know what
18 it's about. It's rather unusual.

19 MR. SOMERS: I don't think it's unusual. I think
20 it has been done.

21 TRIAL EXAMINER: First of all, what is it?

22 MR. SOMERS: It's an authorization card authorizing
23 the Association to represent Mr. Sposito.

24 TRIAL EXAMINER: All right, Mr. Feingold.

25 MR. FEINGOLD: I would like Mr. Sposito to be present

1 so that I can get the benefit of voir dire on any other
2 testimony connected with these papers.

3 MR. SOMERS: Mr. Trial Examiner,----

4 TRIAL EXAMINER: Just a moment. Mr. Marrow, do you
5 have any objection?

6 MR. MARROW: I have no objection to what it is being
7 offered for. To go beyond it, he should be produced.
8 To show that it was the signature and the signature of the
9 witness and the date it was signed, I have no objection to it.

10 TRIAL EXAMINER: Do you have any other objection, Mr.
11 Feingold?

12 MR. FEINGOLD: Yes. I think Mr. Sposito is available
13 and should come here himself. He has been going to business
14 every day for almost a month. May I get this on the record?

15 TRIAL EXAMINER: Is your only objection the fact that
16 Mr. Sposito's name to this document has been identified
17 by someone other than Mr. Sposito?

18 MR. FEINGOLD: Well, I have a general objection as to
19 the value of all these authorization cards. I think we
20 established this early in the trial, and I need not repeat
21 it. I don't think these have any weight as evidence on
22 July 14th, 18th, 19th -- whenever they were executed
23 immediately prior to the election; but I think if they want
24 to introduce this through Mr. Sposito, I think they ought to
25 produce him here. He has been going to business daily,

1 and I want the benefit of questioning Mr. Sposito in this
2 matter.

3 TRIAL EXAMINER: All right. Based on the objections
4 you have made, the objections are overruled. Respondent's
5 Exhibit 57 is received.

6 MR. FEINGOLD: Let me state one further ground. I'm
7 being deprived of the right of cross examination.

8 TRIAL EXAMINER: That objection is overruled too.

9 (The document above-referred to,
10 heretofore marked Respondent's
11 Exhibit No. 57, was received in
12 evidence.)

13 MR. SOMERS: I have no further questions.

14 MR. FEINGOLD: May I ask the lady a few questions?

15 MR. SOMERS: I think Mr. Marrow is first in order.

16 CROSS EXAMINATION

17 Q (By Mr. Marrow) I think the Trial Examiner asked you, but
18 to set the record straight, your brother actually affixed
19 his signature to the document in your presence, and you saw
him sign it, is that right?

20 A Well, I'm almost positive. I witness a lot of things,
21 and I wouldn't do this unless it was done in my presence.

22 Q Well, do you recall the circumstances under which it
23 was done? Was he at home at the time?

24 A Yes.

25 Q And was he ill or hospitalized at that particular time?

1

AFTERNOON SESSION

2

(1:30 o'clock p.m.)

3

TRIAL EXAMINER: On the record.

4

MR. MARROW: Mr. Sandler please.

5

Whereupon,

6

BERNARD SANDLER

7

was called as a witness by and on behalf of the General
Counsel, and, having been first duly sworn, was examined
and testified as follows:

10

DIRECT EXAMINATION

11

Q (By Mr. Marrow) Would you state your name and home
address for the record please?

13

A My name is Bernard Sandler. I live at 2 East Lane
in Bloomfield.

15

Q And what is your occupation?

16

A At the present time I am with the Schenley Distiller
Corporation.

18

Q What is your position?

19

A Reigonal Manager.

20

Q And where is your office?

21

A I work out of New York City.

22

Q Now, prior to working with Schenley, by whom were you
employed?

24

A Prior to that I was employed by the Brescome Distributors.

25

Q And could you tell us for what period of time?

1 A I started in February of 1965, the first of February,
2 and I terminated in September, the latter part of September,
3 '67.

4 Q And what was your position at Brescome?

5 MR. SOMERS: I'm going to object, on the basis that
6 this is not proper rebuttal. This is in fact part of the
7 case in chief. I don't think this is proper at this time.

8 TRIAL EXAMINER: Mr. Somers, It's a little early
9 for me to tell. Up to this point the only thing that has
10 happened is the identification of the witness. We'll
11 have to go along and see what questions of substance are
12 asked. Go ahead.

13 Q (By Mr. Marrow) What was your position?

14 A At the time I was hired as a sales manager.

15 Q By whom were you hired?

16 A By Mervyn Lentz and Mr. Sam Lentz.

17 Q Now, would you tell us please, with respect to the
18 period of time you were employed by Brescome, what your
19 duties and responsibilities were.

20 MR. SOMERS: Objection.

21 TRIAL EXAMINER: Just a moment. Are you contending this
22 is beyond rebuttal?

23 MR. SOMERS: I think this is part of their case in chief
24 and should have been presented at that time.

25 TRIAL EXAMINER: That wasn't my question. Isn't this

1 in possible rebuttal of the testimony given by the
2 Respondent?

3 MR. SOMERS: There has been testimony concerning
4 his authority.

5 TRIAL EXAMINER: Yes, I think so. The objection
6 is overruled.

7 Q (By Mr. Marrow) Do you recall the last question?

8 A No. Repeat it again.

9 MR. SOMERS: I would like an objection -- a continuing
10 objection.

11 TRIAL EXAMINER: You have an objection to this and
12 any other testimony along this similar line.

13 MR. SOMERS: Right.

14 Q (By Mr. Marrow) Could you tell us what your duties
15 and responsibilities were as sales manager for Brescome?

16 A Well, my duties were primarily devoting to sales and
17 movement of brands at Brescome. I was part of a management
18 committee consisting of Mr. Sam Lentz and Mr. Mervyn Lentz
19 and Mr. Stanley Goldstein and myself; and we set policies
20 or helped to set policies as far as sales were concerned.
21 I was brought in there primarily to be part of this
22 area in management.

23 MR. SOMERS: I'm going to object to this testimony
24 as being a conclusion of the witness.

25 THE WITNESS: What is that?

1 TRIAL EXAMINER: No, just a moment. No, I don't
2 think I would strike this. I think the subject is being
3 developed and clarified. Go ahead.

4 Q (By Mr. Marrow) Could you tell us what, if anything,
5 was said to you by either of the Lentzes at the time you
6 were hired or subsequently thereto with respect to your
7 duties and responsibilities in this area?

8 A Let's see now. I was brought in there at the time to be
9 part of the managerial area. Mr. Lentz-----

10 MR. SOMERS: I move it be stricken. It's not responsive.
11 That's-----

12 THE WITNESS: I don't understand what you mean.

13 TRIAL EXAMINER: The witness' last few words in answer
14 to the last question may be stricken. Mr. Sandler, we have
15 a bit of a problem here; and I have a problem in particular./
16 Your status with the Brescome Company has been a matter of
17 dispute, and I am going to have to decide it. I have to
18 decide it not on your conclusions, but on the best primary
19 facts I can get; and you're going to have to tell us, and
20 this is what the General Counsel asked you, what you were
21 told by whoever hired you or brought you into the Brescome
22 Company as to what your duties and responsibilities were
23 going to be, among other things. This was the present
24 question. You should answer this as nearly as you can in
25 the words of what you were told; but it's not required that

1 you use the same words, but your best recollection. Do
2 you understand?

3 THE WITNESS: Well, I think so.

4 TRIAL EXAMINER: You better rephrase your question.

5 Q (By Mr. Marrow) Could you tell us as best you can
6 recall what was said either by way of explanation or otherwise
7 or instruction as to what you were to do in your capacity
8 as sales manager for Brescome by either of the Lentzes
9 or Mr. Goldstein, if he gave you any directions or instructions?

10 A Well, let me bring you up to date. I left the position
11 with Schenley Corporation. I resigned. I went into this
12 area with the Brescome people. I was told at the time
13 that Mr. Lentz Senior was going to retire from the business;
14 and they wanted me to come in there and take charge of the
15 sales of the company -- of the Brescome Company. That
16 was going to be my duties, to be the sales manager, because
17 at the time Mr. Lentz was ill, and he was going to move
18 or less retire from the business. That's why they wanted
19 me to come in there, and this was going to be my future home,
20 and that's the reasons why I went in there with a two-year
21 contract which terminated February 1st of 1967.

22 MR. SOMERS: Objection, and move that the latter comments
23 be stricken as not responsive. The question is what he was
24 told at the time he was hired.

25 THE WITNESS: That's what I'm bringing up.

1 TRIAL EXAMINER: Have you told what was said?

2 THE WITNESS: Yes.

3 TRIAL EXAMINER: All right, go ahead.

4 THE WITNESS: Now, When I went into the company,
5 they turned the responsibilities of the selling over to
6 myself. I was introduced to the men as the sales manager.
7 I was publicized in the papers and the periodicals
8 or beverage media; and my duties were to work with Mr. Mervyn
9 Lentz in the sales department -- the brands that we were
10 responsible for which I was supposed to set up programs
11 and meetings, contests to get some growth on these brands
12 that we were responsible for. I devoted my efforts to
13 set up month in and month out programs on these different
14 brands that the purveyors that we did business with, where
15 they wanted to put the effort as far as the growth is
16 concerned. I conducted meetings mostly on a weekly basis
17 on the different items that we wanted to concentrate on
18 during that particular month. Every month was up to a point
19 a little different. Every purveyor had a different kind
20 of a problem; but it was all centered around the movement
21 of merchandise.

22 A lot of my efforts were in the area of merchandising,
23 in the area of keeping accounts in a good frame of mind,
24 in the area of keeping a good relationship with the salesmen,
25 showing the salesmen how they could increase their incomes,

53 1 showing them their faults, guiding them, sitting down
2 with them and showing them the accounts that needed
3 concentration on. Any account that was a problem, I was
4 only too happy to go out and see if I could eliminate
5 the problems; and if it was a delivery problem or some
6 other problem that might arise, I sat down during a period
7 many times to put together a contest or a program with the
8 different purveyors that came in. I was called back if I
9 was out on the road to sit down with these different
10 purveyors to find out from them what they were looking
11 for as far as their merchandise is concerned.

12 I think I covered mostly all the fields. Anything
13 pertaining to the sales end of it or the marketing, I
14 was responsible for. I cleared a lot of things that were
15 problems with Mr. Mervyn Lentz because he was my superior;
16 and I set up meetings with/merchandising which we had on
17 the premises on any brands that we wanted to concentrate
18 on during the period.

19 I set up quotas during the month. Quotas were set up
20 to according/the increase or the kind of cases that our
21 purveyor was looking for either on a yearly basis or a monthly
22 basis.

23 Let's see, what else did I do? I did not hesitate to
24 go out with a man or a salesman who was affiliated with us
25 if he had a problem. I went on the road a good portion of

54 1 my time calling on important accounts in our area, sitting
 2 down with the account and trying to find out why we can't
 3 get more business or if we had a problem to see if we
 4 couldn't get a meeting of the minds. Many times I went
 5 out to create good will, to sell Brescome and their items,
 6 and all the time thinking of trying to get greater growth.

7 MR. SOMERS: Objection. This is a subjective----

8 TRIAL EXAMINER: All right. I won't strike this, but let's
 9 get on to the next question.

10 Q (By Mr. Marrow) Did you physically occupy any space
 11 at the Brescome plant?

12 A Physically occupy space?

13 Q Where were you located?

14 A I was in the salesroom.

15 Q What did you have in there by way of office furniture?

16 A I had a desk and a chair, and I had filing cabinets.

17 Q And what did you maintain in the filing cabinets?

18 A Oh, I maintained quota sheets and information on
 19 every man in each individual file. Each man had an individual
 20 file of his accounts and anything else pertaining to his
 21 territory; and anything else pertaining to the different
 22 purveyors that we had dealings with; where I took notes on
 23 meetings. Each purveyor had an individual book. These were
 24 all anything pertaining to future or present as far as the
 25 sales end of it is concerned.

55 1 Q Did you have your own telephone?

2 A Yes.

3 Q Did you have access to any other files or information
4 with respect to personnel and sales at the plant?

5 A Well, if I didn't have it, I could get it through the
6 outside office. I mean I had to ask for it. I could get
7 it.

8 Q Through Mr. Goldstein?

9 A Yuh. If I didn't have it, Mr. Goldstein had it.

10 Q You mentioned that you established quotas. Could
11 you describe that in some detail as to just what the----

12 A If a purveyor or manufacturer came in to us, they had
13 a certain goal of what they wanted to obtain, either on
14 a yearly basis or a monthly basis. We in turn would break
15 it down by individual man based on----

16 MR. SOMERS: What does he mean by "we"?

17 THE WITNESS: Pardon?

18 TRIAL EXAMINER: Just a moment. Finish your statement.

19 THE WITNESS: In other words, these quotas would come
20 in and could be set up on a monthly basis or a yearly
21 basis, broken down on a monthly basis, and we would take
22 his past performance -- if it was '66 versus '67 -- and we
23 would add to what he did the year before and add a ten or
24 twenty per cent increase and add it to his monthly quota
25 or based on the yearly basis it would be a 12-month basis.

1 Some quotas we never had a past performance on,
2 but if they were looking for a certain number of cases,
3 we tried to break it down by area as to what we felt the
4 potential was.

5 Q When you say "we," -----

6 A Myself. After I got through I usually submitted it
7 to Mr. Mervyn Lentz to look it over if it made sense and
8 if he thought it would be too low or high. We would discuss
9 it.

10 Q You would meet with Mr. Lentz in-----

11 A In most every case.

12 Q Now, you stated that the quotas came to you or the
13 company from the manufacturer or the manufacturer's
14 representative. In what form would you receive or did you
15 receive the quotas?

16 A Usually in letter form in most cases. Some of the
17 people we did business with usually sent it every month.
18 Some of them set it up on a yearly basis.

19 Q And did you have occasion to sit down and meet with
20 the purveyors to discuss these quotas?

21 A Yes.

22 Q Where would those meetings take place?

23 A Usually on the premises.

24 Q And what would be done with the quotas after they
25 were established?

1 A What would be done with the quotas after they were
2 established? I don't understand.

3 Q After you and Mr. Lentz met and fixed or determined
4 and finalized or arrived at the quota determination, what
5 was the next step with respect to the quota? What would
6 then happen?

7 A I would take it back and break it down according to the
8 individual salesmen and submit it to him on a sheet which
9 we had on the premises; and every month he got the sheet
10 with his individual quota by brand.

11 Q So you would----

12 A He would have a target to hit for the month.

13 Q And would this be distributed to the salesmen?

14 A That's right, at a meeting in most cases.

15 Q Now, you have mentioned the holding of meetings
16 with salesmen. Could you tell us when and where these
17 meetings were held?

18 A With the individual salesmen.

19 Q The group meetings.

20 A The group meetings were usually held in the sales
21 office. Usually a Friday was a meeting day. Usually
22 in the afternoon.

23 Q How were the meetings conducted?

24 A Well, we would have an agenda and in many cases Mr.
25 Mervyn Lentz or Mr. Sam Lentz or Mr. Goldstein would sit down

1 and set up an agenda; and the agenda was usually what I
2 was supposed to talk about, and Mr. Mervyn Lentz
3 usually followed up on mine, or during the time I was
4 talking he might step in to give some of his ideas on
5 the agenda.

6 The agenda was usually set up according to what
7 we wanted to concentrate on at that particular meeting.

8 Q Was this done in writing?

9 A Usually in writing, yes. We usually set it up in writing,
10 yes.

11 Q Now, with respect to the meeting itself, how was that
12 conducted?

13

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1 A Well, I would usually open up, and then we would pick the
2 agenda, according to what I would talk about, and maybe during
3 the meeting Mr. Mervyn Lentz would advise us as to what he
4 thought, and we used to go back and forth with the agenda dur-
5 ing the time of the meeting.

6 Q And were there occasions when neither Mr. Lentz was not
7 present during these sales meetings?

8 A Yes. There were occasions during the period I was there
9 that he wasn't there.

10 Q Who conducted the meetings on those occasions?

11 A Mostly I did it myself. In some cases if he wasn't there,
12 his father, Sam Lentz, might have been there during the period.
13 In some cases Mr. Goldstein was there; but I would put the
14 thing together.

15 Q That would be your responsibility?

16 A Right.

17 Q Now, were there occasions when purveyors or merchandisers
18 participated in the meetings?

19 A Oh, yes. Mostly all the times the purveyors were on the
20 premises at these meetings.

21 Q What arrangements were made prior to the meeting with
22 respect to the purveyor?

23 A The purveyor in many cases would ask for a meeting date
24 some two or three weeks in advance, and I would put it on my
25 calendar, and I would know he was coming.

1 Q Now, who would the purveyor contact?

2 A If he couldn't get myself, he would talk to Mr. Mervyn
3 Lentz; and if I wasn't around Mr. Mervyn would take the request
4 for the meeting; but in most cases if it was given to me, I
5 tried to notify Mr. Mervyn Lentz that such and such a purveyor
6 wanted a meeting to put on his calendar so he would be brought
7 up to date as to what was coming up in the future.

8 Q But in the first instance, they would contact you with
9 respect ---

10 MR. SOMERS: Objection. That is characterizing and lead-
11 ing.

12 TRIAL EXAMINER: The objection is sustained.

13 Q (By Mr. Marrow) How would the contact be made by the
14 purveyor?

15 A It could be mostly on the telephone; and in some cases
16 we might have had it in writing; but most of the time it was
17 done by telephone.

18 Q And who would they call?

19 A Well, as I said, they would either call myself; or if I
20 wasn't around, they would call Mr. Lentz; or in some cases
21 they might call Mr. Lentz before they called me; but I mean
22 it's hard to say who they would call.

23 Q Now, ---

24 A It all depends. From my observation there was no set
25 rule. It's up to the individual. The individual who called

1 on us contacted me; and from what I could see it didn't make
2 any difference whether they contacted me or Mr. Mervyn Lentz
3 because we were brought up to date.

4 Q But you personally were familiar with the different repre-
5 sentatives?

6 A Oh, yes.

7 Q Now, would there be any meetings with the purveyors or
8 their representatives prior to the actual sales meetings to
9 discuss the format or otherwise?

10 A In most cases there would be. In most cases we would
11 have a meeting especially an important meeting, maybe a week
12 or two before our meeting date to set up some kind of a pro-
13 gram.

14 Q And who would participate in those meetings?

15 A The purveyor and ourselves.

16 Q When you say "ourselves," you mean yourself?

17 A Myself, Mr. Lentz -- Mr. Mervyn Lentz or Mr. Sam Lentz.

18 Q What would take place at these meetings?

19 A Well, in these meetings there would be an agenda set up
20 whereby the purveyor would have his representative there. He
21 would open up with what he wants to discuss in this particular
22 area, what he has available to get the brand or item concen-
23 trated on for the period. It might be advertising or merchan-
24 dising. In most cases it was. They would set up a window
25 display prior to it or a floor display on the premises to show

1 what they have available for that month, and with that we would
2 set up some kind of a program of our own, either a contest to
3 create some excitement around the brand or items they wanted to
4 concentrate on.

5 Q Now, what role if any did you play with respect to these
6 contests and other arrangements?

7 A We would sit down and discuss what we wanted to do.

8 TRIAL EXAMINER: Mr. Sandler, your continual use of the
9 word "we" is going to cause me some problem. It depends on
10 whether you mean yourself personally, you and someone else;
11 and if you mean someone else, I want to know who.

12 THE WITNESS: I'm sorry. Usually it would be Mr. Mervyn
13 Lentz, Mr. Goldstein, Mr. Sam Lentz, and myself who would dis-
14 cuss any program that we were going to put into operation,
15 whether it was a contest or anything else pertaining to creat-
16 ing some excitement during the month on these particular items
17 that our purveyors wanted us to concentrate on.

18 Q (By Mr. Marrow) Where were the meetings held between the
19 individuals that you have just mentioned?

20 A Either in the Sales Office, or they would be held in Mr.
21 Sam Lentz's office.

22 Q And how often would these meetings be held?

23 A Oh, at least once or sometimes three times a month. It
24 all depends on when it was necessary.

25 Q Did you have any other meetings with either of the Mr.

1 Lentzes or Mr. Goldstein on a periodic basis?

2 A We usually had meetings on Saturday morning with them.

3 Q Who was present at the Saturday morning meetings?

4 A Usually Mr. Sam Lentz and Mr. Mervyn Lentz and Mr. Gold-
5 stein and myself.

6 Q What took place at these meetings?

7 A Anything pertaining to problems that might arise within
8 the organization, pertaining to maybe marketing, pertaining to
9 individual problems or pertaining to competitive problems.

10 Q Could you give us some specific examples as to what took
11 place or what was discussed?

12 A Oh, there might be a meeting around deliveries which might
13 affect salesmen. There might be a meeting in reference to
14 maybe a shorter week -- how we are going to deliver, and we
15 would make notes. I would make notes and pass it on to the
16 men, or there might be a meeting pertaining to a contest we
17 may want to set up with the salesmen.

18 MR. SOMERS: I move this testimony be stricken as purely
19 conjecture -- "there might be."

20 TRIAL EXAMINER: The question, Mr. Somers, as I recall
21 was that the witness should give illustrations, and I assume
22 that this is the method of identifying illustrations of things
23 that were discussed. Were these matters that you're talking
24 about actually discussed?

25 THE WITNESS: Yes. These are actual.

1 TRIAL EXAMINER: All right, go ahead. No. The question
2 was are these illustrations of problems that actually did arise.

3 THE WITNESS: Oh, yes. Yes.

4 TRIAL EXAMINER: All right, go ahead, Mr. Marrow.

5 Q (By Mr. Marrow) Can you give us any further examples of
6 matters that were discussed at the Saturday meetings?

7 A I think that covers it pretty much.

8 Q Now, could you tell us what responsibilities if any you
9 had with respect to new accounts that came into the company and
10 how that was handled?

11 A Well, on new accounts we usually had a sheet that was
12 given to us from the State on new accounts that had applied for
13 a permit; and my procedure usually was that if an individual
14 was in the area and there was no overlapping in the area, I
15 usually informed the salesman that this account is opening up
16 and to watch it and follow up on it and send in a report of
17 what you have accomplished. If there is an overlapping in an
18 area where there is more than one man going in, I usually tried
19 to help the man who needed the extra compensation; and then if
20 it was an account that looked like it was going to be a very,
21 very important account, I would either discuss it with Mr.
22 Mervyn Lentz to see what he thought in reference to how he
23 wanted to handle it. I could give him my recommendations; but
24 if he wanted to change it, it was his prerogative.

25 Q Were there instances when you assigned accounts directly

1 yourself?

2 A Yes, there was.

3 Q Now, with respect to the information supplied to you by
4 the State of Connecticut, in what form did that come to the
5 plant?

6 A It came in a long sheet usually; and on the sheet was
7 that certain permittee's name and the area and the type of
8 permit he was going to open up, whether it was a restaurant
9 or a package store or club. Usually that's the way the pro-
10 cedure was.

11 Q And would you receive a copy of this information sheet?

12 A Well, whenever it came on the premises I usually received
13 a copy of it, yes.

14 Q Could you tell us what responsibility you had if any with
15 respect to the transfer of accounts between salesmen?

16 A Well, if there came a transfer, we usually discussed it.
17 If it affected a man's compensation, it was either discussed
18 with Mervyn Lentz or Mr. Goldstein; and the three of us or
19 Mr. Sam if he was around, and then we would have a meeting of
20 the minds as to what was the best way to handle it, especially
21 if it affected the man's compensation.

22 Q Did you have access to the information as to what the
23 compensation was for the individual salesman?

24 A I did.

25 Q Where was that information?

1 A That was usually in Mr. Goldstein's office. He usually
2 had it.

3 Q You were familiar with what the earnings were of all the
4 salesmen?

5 A Right.

6 Q Now, could you tell us what work you did outside of the
7 office with respect to calling on accounts and actual sales?

8 A I had a few accounts which I was responsible for which I
9 usually saw on a Monday. My Monday was usually devoted to my
10 own accounts that I was responsible for; and then during the
11 week I was out in the area that I felt I should be in; and if
12 an account was a problem, I took care of it during that day,
13 or I would meet a salesman if he had a problem in his accounts
14 to see if I could help him to take care of any problem he might
15 have in the field.

16 Q Could you give us some illustrations or examples of what
17 you did in connection with the help or assistance?

18 A Well, you mean you want the name of the accounts?

19 Q If you can give us some actual situations, it would be
20 helpful.

21 Q Well, there was one account I can think of called the
22 Cork and Bottle on Sedgwick Road in West Hartford. That par-
23 ticular account I set up originally, and Mr. Frank Smith was
24 the salesman for that account, and I used to watch that one
25 very often. It became very close to the House.

1 I used to go down to the shoreline every so often and see
2 certain accounts and help the men in these accounts that I knew
3 personally myself and try to help them.

4 Q Could you tell us what this help consisted of or what you
5 would do when you say you tried to help them?

6 A Well, I mean try to find out how to get closer to the
7 account, give them better service, make our items the most
8 important on the premises, help them in merchandising, sending
9 our merchandiser in there to put up certain displays and try
10 to make more money for him, and try to get a meeting of the
11 minds as far as personalities were concerned, find out from
12 the account if has any problems with the salesman, and try to
13 get the salesman to get closer to the account. These were
14 all the things that I tried to do.

15 Q Would there be occasions when you would call on an account
16 by yourself -- that is, at a time when the regular salesman
17 was not present?

18 A If a salesman was incapacitated or away, I would pick up
19 his route to help him, and we used to split up the territory
20 with anybody who was available in the company. It was nothing
21 for me to pick up several accounts during the week to call on
22 the account if a man was sick or was called away or was on
23 vacation or something else. I did that very often.

24 Q How about any duties or responsibilities with respect to
25 possible customer complaints? What did you do in that area?

1 A Any complaints naturally I went right out on them; and if
2 it was a delivery complaint I tried to apologize or I would try
3 to get some kind of a meeting of the minds to see if I could
4 eliminate his problem and try to give him maybe better service
5 next time or told him to call me on the phone if he had a prob-
6 lem and maybe I could get him faster service. These are the
7 areas that I felt were important to keep a general flow of
8 merchandise into the area.

9 Q Now, you testified that you were initially hired under a
10 two-year contract.

11 A Right.

12 Q And how was your salary or how was your method of compen-
13 sation determined?

14 A Straight salary.

15 Q And what if anything was paid to you for additional sales
16 that you made either for accounts of your own or ---

17 A Nothing extra.

18 Q In addition to your salary do you have any other compen-
19 sation arrangements?

20 A Expenses -- car or anything else that I had to spend in
21 the field.

22 Q How was that reimbursed?

23 A I made out an expense account.

24 Q What other benefits did you receive during your tenure
25 with Brescome?

1 A Well, we had a pension program, and then they had the
2 hospitalization and medical benefits.

3 Q Any others?

4 A I can't think of anything else.

5 Q What about vacations?

6 A This was all tied in. I took it when I was able to --
7 nothing set as far as the dates were concerned. When it was
8 available, I took a few days off.

9 Q Did you receive any additional compensation for vacations?

10 A No. No, outside of the normal week's pay.

11 Q But during the time that you were absent, were you paid
12 for that period?

13 A Yes.

14 Q And that would be based on your contractual arrangement?

15 A Right.

16 Q Now, did you have any functions or responsibilities with
17 respect to the collections of accounts?

18 A Well, if an account was due as far as collections were
19 concerned and there was nobody around to collect the money,
20 I would usually go out and collect the money and bring it in.

21 Q How about with respect to the accounts that you sold
22 yourself?

23 A Well, accounts that I sold myself, I picked up the checks
24 if it was necessary to pick them up when they were due.

25 Q Incidentally, was there any terminology applied to the

1 accounts that you called on yourself?

2 A Well, I guess you would call them a House Account.

3 Q And what commission if any was paid on those accounts if
4 you know?

5 MR. SOMERS: Objection.

6 TRIAL EXAMINER: Why, Mr. Somers?

7 MR. SOMERS: It seems we have been over this.

8 MR. MARROW: With this witness?

9 MR. SOMERS: Yes.

10 TRIAL EXAMINER: I think he's right, Mr. Marrow.

11 MR. MARROW: I don't recall asking him that question.

12 TRIAL EXAMINER: Look, let's get the witness's answer.

13 It shorter than arguing over it. The question is whether you
14 were paid any commissions on House Accounts.

15 THE WITNESS: No.

16 Q (By Mr. Marrow) Do you know if anyone was?

17 A As far as I know, no.

18 Q Now, did you have any responsibility with respect to the
19 display work that was carried on at the company?

20 A Well, I helped to develop some display work in conjunction
21 with the merchandiser we had on the premises who worked for
22 us. I tried to develop certain displays in certain areas around
23 certain brands.

24 Q With respect to the meetings that were held at the plant
25 amongst the employees, was there an occasion when displays were

1 used in conjunction with meetings?

2 A Yes. At every meeting we showed up some kind of a dis-
3 play, whether it was a display put on by a purveyor or a dis-
4 play that we developed on the premises.

5 Q With respect to the displays developed by Brescome, what
6 responsibility or direction did you have in those areas?

7 MR. SOMERS: Objection to the use of the word "responsi-
8 bilities." Let's find out in fact what the man did.

9 TRIAL EXAMINER: The question is with respect to the
10 displays which were originated by Brescome, what did you do
11 with respect to those displays if anything?

12 THE WITNESS: Well, we would allocate a certain number of
13 these displays to the men.

14 TRIAL EXAMINER: Who is "we"?

15 THE WITNESS: I would in conjunction with Mr. Mervyn Lentz.
16 If we were going to put in 50 or 25 for the month, we would
17 allocate these displays to the men and give them so many a
18 month to put in.

19 Q (By Mr. Marrow) Were displays sometimes set up in con-
20 junction with the sales meetings that were held?

21 A In most cases, yes.

22 Q What did you have to do with those displays if anything?

23 A I originally would put it together or help put it together
24 with our display man.

25 Q Who was that?

1 A Victor -- I can't think of his last name.

2 Q Bonaiuto?

3 A That's right. We would put the thing together and get
4 the signs made up from an outside source or anything else that
5 went along with it to make it attractive; and then we would take
6 a picture of it in most cases. The salesman would have a pic-
7 ture of it to take into the accounts along with the allocation
8 of these displays.

9 Q In these instances did the display man work under your
10 direction?

11 MR. SOMERS: Objection.

12 TRIAL EXAMINER: Overruled. Do you understand the ques-
13 tion?

14 THE WITNESS: Yes. He would more or less be under my
15 direction.

16 TRIAL EXAMINER: Now, what do you mean by that?

17 THE WITNESS: Well, after the booking was brought in by
18 the salesman, it was given to a man who was working with me,
19 who at that time was Peter Garben. He had charge of all the
20 details as far as following through on merchandising; and if
21 it wasn't followed through, it was my responsibility to see it
22 was followed through; and the follow-through would be from the
23 time he got the display booking from the salesman to the time
24 he passed it to Mr. Victor Bonaiuto. He would in turn take it
25 out and put it on the premises of the booking. Does that make

1 sense?

2 (Laughter.)

3 TRIAL EXAMINER: Mr. Marrow?

4 Q (By Mr. Marrow) Mr. Sandler, what if anything did you
5 have to do with respect to hiring of new salesmen while you
6 were employed by Brescome?

7 A Well, we had occasions during the time I was there where
8 I would interview a Mr. Deutsch. He is one I can think of. He
9 had called me on the phone. I had known him before, and the
10 area that he was interested in was being serviced by a sales-
11 man who had left us; and he wanted to come in -- Mr. Deutsch
12 wanted to come in and talk to me about this particular area.
13 I interviewed him and highly recommended him; and then Mr.
14 Mervyn Lentz came in and he talked to him with the final re-
15 sult of a relationship or he being hired by Brescome.

16 Q Were you present at the time Mr. Lentz first interviewed
17 him?

18 A Yuh.

19 Q Were there any other salesmen that you recall that you
20 either interviewed or were present while they were interviewed?

21 A No, I can't recall any others.

22 Q Now, were any salesmen discharged during the time that
23 you were employed by Brescome?

24 A Yes. We had one man who was discharged during that period.

25 Q Do you recall what your participation in that matter was?

1 A I happened to be out on the road; and I received information
2 that the man wasn't doing justice to the area; and I had
3 come back, and I informed Mr. Goldstein at the time that this
4 man should be let go because of the way he was conducting
5 himself in the area.

6 Q Do you recall that individual's name?

7 A Do I have to?

8 Q Only that it would set the record straight if it's a
9 specific example.

10 A I prefer not to. Off the record I would.

11 MR. SOMERS: I object. The man has been asked a question.
12 I think he should answer it.

13 TRIAL EXAMINER: You will have to state his name.

14 THE WITNESS: His name is Pellet. Mr. Sidney Pellet.

15 Q (By Mr. Marrow) Do you recall what happened if anything
16 to Mr. Pellet?

17 A He was let out.

18 Q Mr. Sandler, were you acquainted with an organization
19 called the Brescome Employees Association?

20 A I was acquainted with them, yes.

21 Q And were you a member of that organization?

22 A Yes.

23 Q And do you recall whether or not you attended any meetings
24 during the time you were employed by Brescome?

25 A Yes.

1 Q Can you tell us where and when the meetings were held that
2 you attended?

3 A I attended two or three of those meetings in the premises
4 of a law office. One of them at the time was at Schatz &
5 Schatz. Another one I was at was at Adinolfi, Kelly and
6 Spellacy. I think there were two there. I think I attended
7 three meetings.

8 Q Now, with respect to the latter two meetings, do you recall
9 when those were held?

10 A The dates?

11 Q Yes, if you can fix the time.

12 A I think one of the meetings was in May I think of last
13 year, '67.

14 Q Do you recall that there was an election conducted by the
15 National Labor Relations Board in July?

16 A There was an election -- I don't know whether the NLRB
17 was in on it or not, but there was an election on the premises
18 conducted by Mr. Kelly. That was the only election I can re-
19 call in reference to whether they wanted another union to come
20 into Brescome or not.

21 Q Where did that election take place?

22 A In the law office of Adinolfi and Spellacy and so forth.

23 Q And did you participate in that election?

24 A I did.

25 Q And you are unable at this time to fix the date exactly

1 when that meeting took place?

2 A Gee, the exact date, I can't recall. So many things have
3 happened since then. I thought it was around April or May
4 or June -- in that area.

5 Q Now, do you recall at any time being called into Mr.
6 Lentz's office by Mr. Mervyn Lentz and Stanley Goldstein?

7 MR. SOMERS: Objection.

8 TRIAL EXAMINER: Mr. Somers?

9 MR. SOMERS: I don't see it. If the allegation is being
10 made as to his position, what difference does it make or what
11 relevance is it?

12 TRIAL EXAMINER: Well, either Mr. Lentz or Mr. Goldstein
13 testified to talking to Mr. Sandler, to the best of my recol-
14 lection. If so, this would be a proper subject of rebuttal.
15 Go ahead.

16 Q (By Mr. Marrow) Do you recall a private meeting with
17 Stanley Goldstein and Mervyn Lentz relative to the benefits
18 that you were obtaining while employed by Brescome?

19 A I personally?

20 Q Yes.

21 Q No.

22 MR. MARROW: May I have one moment, please?

23 MR. FEINGOLD: May we have a five-minute recess, please?

24 TRIAL EXAMINER: Mr. Marrow hasn't asked for a recess.

25 MR. FEINGOLD: I have to make a call about this time.

1 TRIAL EXAMINER: Mr. Marrow, do you have much more?

2 MR. MARROW: Perhaps I could finish and then take a brief
3 recess.

4 TRIAL EXAMINER: All right. If you can finish within a
5 reasonable time.

6 Q (By Mr. Marrow) Could you, Mr. Sandler, give us your best
7 estimate as to the percentage of time that you spent in actual
8 selling while employed by Brescome on a weekly average?

9 MR. SOMERS: What does the question mean by "selling"?

10 THE WITNESS: Off the premises? Out of the office?

11 Q (By Mr. Marrow) Out of the office or out of the premises.

12 A I would say I was out three-quarters of the time anyway.

13 Q And I believe you testified with respect to the accounts
14 you serviced, you were able to handle that in one day?

15 A Usually.

16 Q And the balance of your time that you were out of the
17 office would be taken up with other accounts?

18 A Other areas, yuh.

19 Q Now, are you acquainted with a Mr. Amoroso?

20 A Yes. Very much so.

21 Q Could you tell us what his duties were as you observed
22 them?

23 A Mr. Amoroso was in charge of Brescome's Wine Department.

24 He was responsible for all the wines that Brescome handled.

25 MR. SOMERS: Objection. This is a conclusion of the

1 witness. The question is as to what he observed Mr. Amoroso
2 doing.

3 TRIAL EXAMINER: All right. I see no need in striking
4 any of the statements that have been to this point, but the
5 question was what is it that you observed him doing -- what
6 were his duties?

7 THE WITNESS: Well, he conducted wine tasting programs
8 around the consumer. He was responsible for the Italian Swiss
9 Colony salesmen and wine men.

10 MR. SOMERS: Objection.

11 MR. MARROW: I object to this continuous objection.

12 MR. SOMERS: "He was responsible for it" is not a de-
13 scription of the job.

14 TRIAL EXAMINER: Mr. Marrow?

15 MR. MARROW: Now, we're not talking about an individual
16 in a factory whose every physical movement would be clocked
17 and observed. I think in connection with a description of
18 this type it is necessary for a witness to testify not solely
19 as to what physical acts an individual takes, but perhaps
20 what his obligations and duties entail.

21 TRIAL EXAMINER: The problem, Mr. Marrow, comes from the
22 use of quite ordinary and normal words which have an ambiguous
23 content. What Mr. Somers undoubtedly is concerned about is
24 that an argument or finding would be made based on the use of
25 such words without relation to their context or content, and

1 it's a legitimate concern with which Mr. Sandler probably is
2 not intimately aware. Mr. Sandler, our problem is this. Mr.
3 Amoroso's status is also in dispute, and there are all kinds
4 of responsibilities; and one of the things with which I am
5 concerned is if he had any responsibility in connection with
6 the other men in the Wine Department or any other men working
7 for Brescome; and if he had such a responsibility, what actu-
8 ally in detail it was. Was it a real responsibility or was it
9 a minimal responsibility; and if it was a responsibility, what
10 could he do and what could he not do. This has to be based on
11 what you observed, what you were told by management, and what
12 you yourself personally knew. Have I made this clear to you?

13 THE WITNESS: Very well presented.

14 TRIAL EXAMINER: Go ahead, Mr. Marrow.

15 Q (By Mr. Marrow) In that connection would you tell us
16 what you observed and what you saw to be Mr. Amoroso's duties
17 with respect to the sale of wine?

18 A Mr. Amoroso was responsible for the sales of Italian Swiss
19 Colony Wines. He had four or five men working under him. They
20 made their living on the sale of wines. Mr. Amoroso watched
21 this area in regard to the individual wine men coming up with
22 the figures that were allocated to him. Mr. Amoroso would help
23 these men by going into their accounts, working with these men
24 and also seeing that the wine tasting requests were followed
25 through at the consumer level. Many times he conducted them

1 himself. Many times the wine men went out and conducted these
2 tastings. He also was responsible to see that any promotion
3 at the retail level around these wines were followed through.
4 They were booked through him, and he in turn followed through
5 to see that these requests were upheld. That was one of his
6 main duties.

7 Mr. Amoroso also worked in many areas in regard to ship-
8 ments. He helped in the warehouse many times. He set up
9 displays around wines. He worked with our display man many,
10 many times. He helped hire salesmen.

11 MR. SOMERS: Objection.

12 TRIAL EXAMINER: With respect to this last statement you
13 made, you will have to be specific in that respect and specific
14 as to what you yourself personally know.

15 THE WITNESS: He recommended the hiring of a Larry ---
16 Wait a minut. I can't think of his last name.

17 Q (By Mr. Marrow) Sameloff?

18 A Sameloff.

19 TRIAL EXAMINER: How do you know that?

20 THE WITNESS: Because at the time I was there his name
21 came up through Mr. Amoroso. The man was finally hired.

22 Q (By Mr. Marrow) When you say "came up," could you des-
23 cribe the circumstances?

24 A In a conversation with myself.

25 Q With yourself and Mr. Amoroso?

1 A Just Amoroso.

2 Q Just the two of you?

3 A And then it was taken to Mr. Mervyn Lentz and I guess Mr.
4 Goldstein at the time, if my memory is correct.

5 TRIAL EXAMINER: Who took this to Mr. Lentz?

6 THE WITNESS: Mr. Amoroso.

7 TRIAL EXAMINER: Were you present?

8 THE WITNESS: No.

9 TRIAL EXAMINER: On what do you base this statement?

10 THE WITNESS: Well, it would have to be cleared through
11 Mr. Mervyn Lentz and Mr. Goldstein before the person would be
12 hired.

13 TRIAL EXAMINER: All right then, Mr. Sandler, if I un-
14 derstand your last testimony, Mr. Amoroso discussed with you
15 the possibility of hiring this man, Larry Sameloff, and he
16 was later hired?

17 THE WITNESS: Right.

18 TRIAL EXAMINER: And as a matter of fact this appears to
19 be the extent of your knowledge as to what Mr. Amoroso's par-
20 ticipation in that hiring was?

21 THE WITNESS: Right.

22 TRIAL EXAMINER: All right, go ahead, Mr. Marrow.

23 Q (By Mr. Marrow) You mention that there were four or
24 five employees classified as wine salesmen under Mr. Amoroso.
25 Could you tell us if you recall how many employees were

1 classified as liquor salesmen who worked in your section?

2 A Fifteen.

3 Q Now, do you recall any instances where, after new sales-
4 men had been hired, you were asked by any of the Lentzes as
5 to what your attitude or feeling was about their performance?

6 A May I have that again?

7 Q Do you recall any instances where, after a new salesman
8 was hired, you were asked or consulted by either Mervyn or
9 Sam Lentz with respect to your opinion as to the man's per-
10 formance?

11 A I think Mr. Dressler was.

12 MR. SOMERS: Objection. This calls for a yes or no answer.

13 THE WITNESS: Yes.

14 Q (By Mr. Marrow) Could you tell us the situation or
15 circumstances?

16 A When Mr. Dressler was hired at the time, I think it was
17 several weeks later I was asked my opinion of his activities.

18 Q Do you recall who asked you that?

19 A I can't recall whether it was Mr. Mervyn Lentz or Sam
20 Lentz. I don't recall.

21 MR. MARROW: I have no further questions at this time.

22 MR. FEINGOLD: May we have a ten-minute recess?

23 TRIAL EXAMINER: All right, we'll take a ten-minute
24 recess.

25 (A short recess was taken.)

1 TRIAL EXAMINER: On the record.

2 Had you concluded your examination, Mr. Marrow?

3 MR. MARROW: Yes, I did before we went on the recess.

4 TRIAL EXAMINER: All right, Mr. Feingold.

5 MR. FEINGOLD: I have asked the stenographer to mark a
6 document.

7 (The document above-referred to
8 was marked Charging Party's
Exhibit 49 for identification.)

9 (The document was handed to Mr. Somers.)

10 Q (By Mr. Feingold) Mr. Sandler, I show you a sheet of
11 paper marked Charging Party's 49 for identification and ask
12 you whether you find your signature on there.

13 A Yuh.

14 Q Do you notice there is a date, October 29, 1965? Is that
15 your handwriting?

16 A Yup.

17 Q Could you tell us what that is?

18 A It looks like an application for membership.

19 Q To what organization?

20 A Brescome Distributors Corporation.

21 Q Did you apply for membership?

22 A Yes, I did. It's signed.

23 Q Do you know at whose request you applied for membership?

24 A No, I don't recall.

25 Q No recollection?

1 A No.

2 Q On or about this date did you attend a meeting of the
3 organization where you were admitted to membership?

4 A It could be, yes. I don't recall. It's quite a while
5 back.

6 MR. FEINGOLD: I offer Charging Party's 49 for identi-
7 fication into evidence.

8 MR. SOMERS: Objection on the basis of 10 (b).

9 MR. MARROW: No objection.

10 TRIAL EXAMINER: Overruled. Charging Party's 49 is
11 received.

12 (The document above-referred to,
13 heretofore marked Charging Party's
14 Exhibit No. 49, was received in
evidence.)

15 Q (By Mr. Feingold) You testified that sometime in May or
16 June of 1967 you attended meetings of the Association in Mr.
17 Adinolfi's office.

18 A In that area.

19 Q Do you recall who called this meeting or meetings?

20 A No.

21 Q Do you recall that there was a discussion about taking a
22 vote whether to have the inside or outside union?

23 MR. SOMERS: Objection, leading.

24 TRIAL EXAMINER: It's leading, and the witness has already
25 testified to a vote. Let's get to the main point.

1 THE WITNESS: Yuh, there was a discussion.

2 Q (By Mr. Feingold) Could you tell us what that discussion
3 was?

4 A Oh, brother.

5 Q As best you can recall.

6 MR. SOMERS: May we have the date as to when the meeting
7 occurred?

8 THE WITNESS: Are you asking me?

9 TRIAL EXAMINER: Yes, can you give us the date?

10 THE WITNESS: As to when the meeting was called?

11 TRIAL EXAMINER: Yes.

12 THE WITNESS: I can't recall the exact date.

13 Q (By Mr. Feingold) Perhaps I can refresh your recollection.
14 Do you recall about a week later there was a second meeting at
15 which a vote was taken?

16 MR. SOMERS: Objection, leading.

17 TRIAL EXAMINER: No, I won't sustain the objection on that
18 basis. I'm trying to think though, Mr. Feingold, in what way
19 this is rebuttal testimony.

20 MR. FEINGOLD: I think it's rebuttal testimony, but more
21 important than that, I think that when I rested my case we had
22 quite a bit of colloquy with reference to the questions I would
23 ask Mr. Sandler, and at that time I stated there was much to do
24 about whether the Respondent had rested his case at that time.
25 It was a question of adjourning to a later date, and at that

1 time I stated I reserved my right in questioning Mr. Sandler;
2 and it was indicated if my recollection is correct that you
3 would take all this into consideration when I questioned Mr.
4 Sandler.

5 MR. SOMERS: There is no such indication, and the Respondent
6 stated that unless the General Counsel and Charging Party
7 had rested, it would proceed with its case.

8 TRIAL EXAMINER: Gentlemen, I have no clear recollection
9 of it; but in any event, Mr. Feingold, I'm going to sustain
10 the objection to this particular area. I think that you're
11 going too far out of rebuttal.

12 MR. FEINGOLD: I don't think so. There was quite a bit
13 of testimony about the meetings in Mr. Adinolfi's office. The
14 Respondent put a number of witnesses on about signing the
15 papers, taking ballots in Respondent's case. There was quite
16 a bit of testimony.

17 TRIAL EXAMINER: All right, I think possibly you're right;
18 but I also don't recall any particular dispute over this par-
19 ticular point. Get off it.

20 MR. FEINGOLD: I want to know what Mr. Sandler's involve-
21 ment was, whether he was actually at the meeting. A witness
22 this morning said he didn't even remember he was there.

23 MR. SOMERS: There was no dispute as to his presence.

24 MR. FEINGOLD: Mr. Dressler said this morning he had no
25 recollection of his being at the meeting.

1 MR. SOMERS: That's not rebuttal.

2 TRIAL EXAMINER: Mr. Sandler has testified he was at the
3 meeting at which a vote was taken in Mr. Adinolfi's office.
4 I'm not interested in the discussion that preceded it. Let's
5 get on, will you?

6 Q (By Mr. Feingold) Before the vote was taken, wasn't there
7 a meeting about a week before that which was adjourned to the
8 following week?

9 MR. SOMERS: Objection.

10 TRIAL EXAMINER: No, overruled.

11 MR. SOMERS: What vote are we talking about?

12 TRIAL EXAMINER: Let's get on with the questioning,
13 please. The witness has testified there was a vote taken in
14 Mr. Adinolfi's office which he remembers. I assume it has
15 reference to that vote.

16 MR. FEINGOLD: Yes.

17 Q (By Mr. Feingold) And about a week before that, wasn't
18 there a meeting at which a vote was postponed? There was
19 discussion of a vote and the meeting was adjourned?

20 MR. SOMERS: Objection. It's leading and still I don't
21 see where it's a matter for rebuttal.

22 MR. FEINGOLD: I'm trying to refresh his recollection.

23 MR. SOMERS: Don't answer the question until the Trial
24 Examiner rules.

25 TRIAL EXAMINER: All of this is totally unnecessary. Mr.

1 Sandler, bearing in mind the meeting at which the vote was
2 taken, do you remember any prior meeting in Mr. Adinolfi's
3 office which had any reference to such a vote?

4 THE WITNESS: No, I do not.

5 TRIAL EXAMINER: All right, go ahead.

6 Q (By Mr. Feingold) Now, you do recall a meeting when the
7 vote was taken? Slips of paper were passed out?

8 A Right.

9 Q Do you recall how the people were arranged?

10 MR. SOMERS: Objection.

11 TRIAL EXAMINER: Mr. Feingold, I have no way of knowing,
12 of course, what point you're attempting to make; but I'm not
13 interested in relitigating these minor matters that seem to be
14 only too well covered.

15 MR. FEINGOLD: Let me ask one question, and I can possibly
16 cut it short.

17 TRIAL EXAMINER: I am asking you to consider your ques-
18 tions and try to eliminate the matters we don't have to go over
19 again. I'm not going to limit you until I determine that you're
20 asking questions that obviously are necessary. It's difficult
21 for me to tell at times where counsel is headed. I'm just
22 asking you to be pertinent.

23 Q (By Mr. Feingold) Do you recall there were discussions
24 at those meetings about an inside and an outside union?

25 A That was the reason for the vote, yes.

1 Q Did you participate in those discussions?

2 MR. SOMERS: Objection.

3 THE WITNESS: No, I don't think I did. I don't think I
4 gave my opinion, no.

5 MR. SOMERS: I withdraw the objection.

6 Q (By Mr. Feingold) Did you say anything at those meetings?

7 A No. I don't recall saying anything at the meetings. I
8 gave my vote. That's about all, and I listened.

9 Q Weren't the votes held in the plain view of everybody
10 around the table, Mr. Sandler?

11 A I would say so.

12 Q Now, going back to prior to these meetings, did it come
13 to your attention that the Distillery Workers were trying to
14 organize the salesmen at Brescome?

15 A Yes.

16 Q And did you have discussions with Mr. Mervyn Lentz or
17 Sam Lentz about it?

18 MR. SOMERS: Objection. Where this comes in on rebuttal,
19 I have no idea. No testimony from either party up to this
20 point in this case concerning any discussion with Mr. Sandler
21 with regard to this matter.

22 MR. MARROW: I disagree.

23 TRIAL EXAMINER: All right, Mr. Marrow, I'll hear you.

24 MR. MARROW: Both Mr. Goldstein and Mr. Lentz testified
25 at length as to all-day meetings they had with every employee,

1 including this witness, as to this entire episode -- the inside
2 and the outside union and the benefits and so forth and so on.
3 If that's what his inquiry is, then I think Mr. Somers is in
4 error.

5 TRIAL EXAMINER: I did not understand it to be Mr. Fein-
6 gold's inquiry.

7 MR. FEINGOLD: Sure, that's my inquiry of what happened
8 in June. There's no question about it.

9 TRIAL EXAMINER: Then I'm going to sustain the objection
10 because the witness has already answered that question for
11 Mr. Marrow.

12 MR. FEINGOLD: I don't think he has.

13 TRIAL EXAMINER: He certainly did.

14 MR. FEINGOLD: That's only one discussion. He said he
15 never had discussion with him alone.

16 MR. SOMERS: That was not his testimony either.

17 TRIAL EXAMINER: All right, Mr. Feingold.

18 MR. FEINGOLD: I would like to proceed with cross-examina-
19 tion without interruption.

20 MR. SOMERS: Well, I'm not going to let you.

21 MR. FEINGOLD: This is not a laughing matter. It's a
22 serious matter.

23 TRIAL EXAMINER: I'm sorry I permitted the smile to cross
24 my face. Mr. Feingold, I'm sorry, but this is rebuttal. I
25 don't think there was any reference to conversations between

1 the witness and any other member of management about the union
2 or unions in May, June or July of last year other than immedi-
3 ately preceding the election or immediately after a certain
4 letter was received from the Distillery Workers Union.

5 MR. FEINGOLD: Yes.

6 TRIAL EXAMINER: And both of those matters were covered
7 by General Counsel. Now, if you want to briefly go over the
8 same territory again, I'll permit you to do it if you want to
9 do it briefly, but I don't want to permit any prolonged in-
10 terrogation on the point.

11 Q (By Mr. Feingold) Do you recall, Mr. Sandler, seeing a
12 letter from the Distillery Workers Union sometime in June?

13 MR. SOMERS: Objection.

14 TRIAL EXAMINER: Overruled.

15 THE WITNESS: It never came to me.

16 Q (By Mr. Feingold) It never came to you? Do you recall
17 that there were sales meetings at which Mr. Sam Lentz and Mr.
18 Mervyn Lentz spoke to the salesmen about the outside union and
19 inside union?

20 A I do.

21 Q And on those occasions did you address the salesmen?

22 A I did.

23 Q And on those occasions did you speak in favor of the
24 Association?

25 A I can't say I did.

1 Q Did you speak against the outside union?

2 A I would say I did, yes.

3 Q And was Mr. Goldstein present when you ---

4 A I would say yes.

5 Q Did you tell the men on those occasions that out of re-
spect for Mr. Lentz you should stay with the Association?

6 MR. SOMERS: Objection, leading.

7 THE WITNESS: No, I did not say that.

8 TRIAL EXAMINER: All right, does your objection stand?

9 MR. SOMERS: No, I'll withdraw the objection.

10 THE WITNESS: I did not say that.

11 Q (By Mr. Feingold) But you told the men you favored the
12 Association?

13 MR. SOMERS: Objection. He has already answered that
14 question.

15 TRIAL EXAMINER: I don't know about his having answered
16 it, but it's sustained as to the leading.

17 Q (By Mr. Feingold) Tell us as best you can what you said
18 with respect to the inside union, meaning the Association, and
19 the Distillery Workers, meaning the outside union.

20 MR. SOMERS: There is no testimony put on on the Respon-
21 dent's case with regard to any remarks made by Mr. Sandler at
22 the meetings that were held at the plant. Absolutely no testi-
23 mony concerning that.

24 TRIAL EXAMINER: Gentlemen, there are a number of reasons
25

1 for permitting this, most of which I would not care to state
2 in the witness' presence, but there is good grounds for re-
3 ceiving evidence, and I will receive.

4 MR. SOMERS: I have an objection.

5 Q (By Mr. Feingold) To the best of your recollection ---

6 A I did say at the time I didn't think we in Brescome need-
7 ed an outside affiliation because the majority of the salesmen,
8 I felt, were being well paid or compensated for their efforts.
9 I think I also went into the area that the outside union could
10 not guarantee that Brescome would hold these lines if these
11 lines were not being sold in growth. They still had to be
12 sold, and no union was going to hold these many lines that
13 we had. I think it was along those lines.

14 Q Were you asked by Mervyn or Sam Lentz to make these state-
15 ments?

16 MR. SOMERS: Objection.

17 TRIAL EXAMINER: Overruled.

18 THE WITNESS: I think Mervyn Lentz asked me to make the
19 statement.

20 Q (By Mr. Feingold) Now, Mr. Sandler, going back to your
21 job with Brescome, did you have an actual title of Sales
22 Manager?

23 A I did.

24 Q Did you have a card?

25 A I did.

1 Q Did that card designate you as the Sales Manager?

2 A It was.

3 Q Was that the card that was handed out to the trade when
4 you called on them?

5 A It was.

6 Q Now, there was some discussion about quotas. Was it your
7 job initially to prepare the quotas -- the overall quotas?

8 MR. SOMERS: Objection, leading.

9 MR. FEINGOLD: All right, I'll rephrase it.

10 Q (By Mr. Feingold) Whose job was it in the first instance
11 to prepare the overall quota?

12 MR. SOMERS: Objection, leading.

13 TRIAL EXAMINER: No, that's not leading. Mr. Feingold,
14 all I can do is suggest to you again that this area was travel-
15 ed over by General Counsel.

16 MR. FEINGOLD: This is a preliminary question.

17 TRIAL EXAMINER: To a limited extent, I'll permit you to
18 go ahead.

19 Q (By Mr. Feingold) Whose job was it to prepare the over-
20 all quota in the first instance?

21 A I would say it was mine.

22 MR. SOMERS: What was the answer?

23 THE WITNESS: Mine.

24 Q (By Mr. Feingold) And after you prepared it, did you
25 discuss it with anyone?

1 A In most cases with Mervyn Lentz, yes.

2 Q And generally were your recommendations adopted?

3 A In the majority of cases, yes.

4 MR. SOMERS: Objection. Leading and characterization and
5 conclusion.

6 TRIAL EXAMINER: No, there is no sense in striking it,
7 Mr. Somers. The question was leading to a certain extent, and
8 I'll to bear that in consideration, but to strike it now would
9 not accomplish anything. Go ahead.

10 Q (By Mr. Feingold) Now, after these quotas were fixed
11 for the overall basis, who worked on breaking down the quotas
12 to the individual men?

13 A I did.

14 Q Was there a lady employed who took the place of Guttermann,
15 do you know?

16 A No.

17 Q Did Mr. Guttermann break these figures down for you?

18 A He did nothing.

19 Q Was Guttermann the Administrative Assistant or all-around
20 utility man?

21 A He was.

22 Q And under whose supervision did he work?

23 A He worked under mine and Mervyn Lentz's.

24 MR. SOMERS: Objection. "He worked under." This still
25 doesn't tell us anything.

1 TRIAL EXAMINER: Well all right, I'll consider that when
2 I read the whole testimony, Mr. Somers. The witness is testi-
3 fying in normal language of people in everyday affairs. I
4 can't tell him to use a stylized language.

5 Q (By Mr. Feingold) Who would give Mr. Gutterman instruc-
6 tions in carrying out his job and duties?

7 MR. SOMERS: Objection. These are leading, and there is
8 no statement that anyone gave him instructions as to carrying
9 out his duties.

10 TRIAL EXAMINER: Sustained.

11 Q (By Mr. Feingold) Did Mr. Gutterman receive any instruc-
12 tions from anybody?

13 A Yes.

14 MR. SOMERS: Objection, leading.

15 TRIAL EXAMINER: Overruled.

16 Q (By Mr. Feingold) From whom would he take his instructions?

17 A From Mr. Mervyn Lentz or myself.

18 Q And how about this Victor Bonaiuto who did the display
19 work or helped with the displays?

20 A What about him?

21 MR. SOMERS: Objection.

22 Q (By Mr. Feingold) Was he under the direction of anyone?

23 MR. SOMERS: Objection, leading.

24 TRIAL EXAMINER: Just a moment. Well, Mr. Somers, I have
25 to assume that an employee of this company was under somebody's

1 direction. The only question is whether this witness knows or
2 would have reason to know. Do you know whether he took direc-
3 tions and if so, from whom?

4 THE WITNESS: He took directions from Mr. Mervyn Lentz
5 and from myself.

6 Q (By Mr. Feingold) And what sort of directions would you
7 give him, Mr. Sandler?

8 A Anything pertaining to merchandising. Anything pertain-
9 ing to if an individual or a salesman became incapacitated or
10 wasn't around, he was requested by myself to cover his area.

11 Q Did he cover accounts sometimes?

12 A He did.

13 Q Did you assign that coverage?

14 A That particular day I did.

15 Q And you said you covered accounts sometimes?

16 A Right.

17 Q Did Mervyn Lentz ever fill in and cover accounts?

18 A He could.

19 MR. SOMERS: Objection. Constantly leading.

20 TRIAL EXAMINER: You're leading, Mr. Feingold. I won't
21 strike the last statement. It's of no consequence for sub-
22 stantive evidence.

23 MR. SOMERS: If he is trying to impeach the witness, I
24 won't object to the leading question.

25 MR. FEINGOLD: I'm not trying to impeach the witness, and

1 Mr. Somers is way off base when he says that.

2 TRIAL EXAMINER: We're getting onto one of those merry-
3 go-rounds. If you wish to impeach the witness, you may.

4 MR. FEINGOLD: I'm not trying at all.

5 TRIAL EXAMINER: I've told you gentlemen many times that
6 any lawyer may impeach his own witness in my hearing if he
7 wants to.

8 MR. MARROW: How about other lawyers?

9 TRIAL EXAMINER: Enough of this.

10 Q (By Mr. Feingold) You testified about the duties of a
11 Mr. Hank Amoroso, is that correct?

12 A You're a hundred per cent correct.

13 Q Could you tell us, to enlighten us, making a comparison
14 between your duties and your relationship with the liquor
15 salesmen and his relationship with the wine salesmen what
16 similarities there were?

17 MR. SOMERS: Objection. First of all he testified to the
18 duties, and he is asking a comparison and a conclusion to be
19 drawn by this witness.

20 MR. MARROW: I don't think it calls for a conclusion. It's
21 an explanation on which a conclusion should be drawn.

22 TRIAL EXAMINER: I'm going to sustain the objection. If
23 you want the witness to spell out in detail what things that
24 Mr. Amoroso did that were like, similar to or exactly identical
25 to what he did, I'll hear that question and listen to argument

1 on it.

2 MR. FEINGOLD: I thought I asked that.

3 MR. SOMERS: I object. He has been through this. He
4 stated Mr. Amoroso's functions and his own.

5 MR. FEINGOLD: I withdraw the question.

6 TRIAL EXAMINER: Gentlemen, before we get too far on this,
7 I trust this is the last time I have to discuss it. Mr. Somers,
8 as I understand the rules of procedure in this kind of a situ-
9 ation, it is improper for me to prevent Charging Party attorney
10 from asking questions merely because they were touched upon by
11 General Counsel. He may traverse the same area. I will, to
12 the extent that it's possible, limit him; but I can't prevent
13 him entirely; and I'm attempting to operate under that procedure.
14 Go ahead, Mr. Feingold.

15 Q (By Mr. Feingold) Did Mr. Amoroso have a title?

16 A His title was Wine Manager.

17 Q And how many men worked under him?

18 MR. SOMERS: Objection.

19 TRIAL EXAMINER: That's sustained.

20 Q (By Mr. Feingold) Did he have his own accounts?

21 A Yes, he did.

22 Q Now, do you know how he was paid -- salary or commission?

23 A Straight salary.

24 Q And if his sales increased in any way, did he receive any
25 additional compensation?

1 A This I don't know.

2 Q Now, did he go out on the road with the wine salesmen?

3 A He did.

4 Q And was his, if you know, duties with respect to going
5 out on visits with other wine salesmen the same as yours with
6 the liquor salesmen?

7 MR. SOMERS: Objection.

8 TRIAL EXAMINER: Sustained.

9 Q (By Mr. Feingold) What did he do when he went out on the
10 road with the wine salesmen?

11 MR. SOMERS: Has this witness observed?

12 TRIAL EXAMINER: Yes, this would have to be a matter of
13 your personal knowledge.

14 THE WITNESS: Do you want ---

15 MR. FEINGOLD: Excuse me. I withdraw the question.

16 Q (By Mr. Feingold) Did you have occasion to discuss with
17 Mr. Frank Amoroso his duties that he performed for Brescome?

18 A I would say yes.

19 Q And as a result of those discussions and your observations,
20 could you tell us what his relationship was with respect to the
21 wine salesmen at Brescome?

22 MR. SOMERS: Can we find out when the discussions with
23 Mr. Amoroso took place?

24 THE WITNESS: Oh, brother:

25 TRIAL EXAMINER: All right gentlemen. Mr. Feingold, you're

1 going to have to rephrase that question and break it down.
2 You have two questions in there, and before the witness answers
3 them, I would also like to hear from you as to why I should
4 take testimony from this witness as to his discussions with Mr.
5 Amoroso about Mr. Amoroso's job.

6 MR. FEINGOLD: I think it's relevant. How else is he
7 going to know except discussing it with this man?

8 TRIAL EXAMINER: Why is it admissible? It seems to me
9 it constitutes hearsay, and I'm going to cut down on that as
10 much as I can.

11 MR. FEINGOLD: I'll reframe the question.

12 Q (By Mr. Feingold) Did you observe Mr. Amoroso in the
13 course of carrying out his duties on the premises of Brescome?

14 A I did.

15 Q Did he ever run a sales meetings while you were employed
16 by Brescome?

17 MR. SOMERS: Objection.

18 TRIAL EXAMINER: No, I'll overrule it.

19 MR. SOMERS: The word "run."

20 TRIAL EXAMINER: Mr. Somers, some things perhaps will
21 need clarification. I don't know what the witness's answer is
22 going to be.

23 THE WITNESS: He did.

24 Q (By Mr. Feingold) Did he ever act as a chairman of these
25 sales meetings?

1 MR. SOMERS: Objection.

2 TRIAL EXAMINER: All right, sustained.

3 Q (By Mr. Feingold) On the occasion that he ran meetings
4 of salesmen, could you tell us what he would discuss at those
5 meetings?

6 A He would discuss ---

7 MR. SOMERS: Could we establish this man's presence at
8 these meetings?

9 TRIAL EXAMINER: The question, Mr. Sandler, is were you
10 personally present at any of these meetings?

11 THE WITNESS: Yes.

12 TRIAL EXAMINER: All right. Now, the question was what
13 did you hear Mr. Amoroso say or see him do?

14 THE WITNESS: Mr. Amoroso would present to the wine men
15 and also the people who were responsible for liquor, it could
16 be in the introduction of a new package or new type or pro-
17 motion or a special display or clarifying the language where
18 it was difficult to pronounce the type of wine. He was
19 well educated in this field, well schooled; so he was an indi-
20 vidual who most of the men in the organization leaned on per-
21 taining to any wine problem.

22 MR. SOMERS: I move that the last statement be stricken
23 as a conclusion of the witness.

24 TRIAL EXAMINER: The statement of the witness that he was
25 the man the other men leaned on and the remainder of that

1 statement may be stricken. Mr. Sandler, just so you will under-
2 stand, this is undoubtedly your conclusion perhaps from obser-
3 vations. I must have the basis on which you make the state-
4 ment, not your conclusion. Go ahead.

5 Q (By Mr. Feingold) Mr. Sandler, did you ever hear wine
6 salesmen go to him for information about wines?

7 A I have.

8 Q Have you had occasion to consult him about wines?

9 A I have.

10 Q Did this happen rather frequently?

11 A Quite.

12 Q Now, could you tell us who fixed the quotas, if you know,
13 for the wine salesmen?

14 A Mr. Amoroso.

15 Q And did he assign the breakdown of quotas, if you know?

16 A I would say so, yes.

17 MR. SOMERS: Objection. It's a conclusion. There is no
18 basis for these remarks which are being made. We haven't
19 established how this witness knows. This characterization of
20 "I would say."

21 TRIAL EXAMINER: Mr. Sandler, if you will hesitate a
22 little bit before your answer to the questions, perhaps I can
23 get an objection first. It makes it easier for me when I can
24 rule on the objection before the answer. I won't strike the
25 last answer.

1 Q (By Mr. Feingold) Did you have occasion to discuss wine
2 quotas with Mr. Amoroso?

3 A No.

4 Q Did you ever have discussions at which you and Mervyn
5 Lentz and Amoroso were present discussing policies?

6 A On wines, no.

7 Q On general policies.

8 MR. SOMERS: These are leading.

9 TRIAL EXAMINER: The last objection is overruled. Mr.
10 Feingold, you're going to have to stay away from the leading
11 questions. To the extent they are leading and to the extent
12 they are answered, if there is a conflict in the evidence, I
13 will have to weight the fact that it was a leading question.

14 Q (By Mr. Feingold) Now, going back to this meeting when
15 you had occasion to speak in favor of the Association, was Mr.
16 Amoroso present at that time?

17 A He was.

18 Q Did he address that meeting?

19 A He did.

20 Q Do you recall what he said?

21 A No.

22 Q Do recall whether he spoke in favor of the Association at
23 that time?

24 MR. SOMERS: Objection, leading and suggestive.

25 TRIAL EXAMINER: Yes, it is; but it's also designed to

1 refresh his recollection. Overruled.

2 THE WITNESS: He did not favor an outside union.

3 Q (By Mr. Feingold) Could you tell us as best you can if
4 you can recollect what he said?

5 A No.

6 Q Now, do you know whether Mr. Amoroso had access to confi-
7 dential information?

8 MR. SOMERS: Objection, leading.

9 TRIAL EXAMINER: I'll take the answer if the witness has
10 personal knowledge.

11 Q (By Mr. Feingold) If you know.

12 A I really don't.

13 MR. FEINGOLD: I have no further questions.

14 TRIAL EXAMINER: Cross-examination?

15 MR. SOMERS: I think we need about a 15-minute recess.
16 There has been substantial testimony I would like to go
17 through. Prior to that I would like to request any written
18 statements that have been given to counsel for the General
19 Counsel, and I would also request any substantially verbatim
20 transcripts which were not signed or otherwise approved or
21 adopted by the witness.

22 MR. MARROW: I have none.

23 MR. FEINGOLD: I have none.

24 TRIAL EXAMINER: All right.

25 MR. FEINGOLD: Let the record show that the first time I

1 spoke to Mr. Sandler was this morning.

2 MR. SOMERS: I don't think you need to testify on the
3 record.

4 TRIAL EXAMINER: I didn't hear you, Mr. Somers.

5 MR. SOMERS: I don't think the statement of Mr. Feingold
6 is necessary.

7 MR. FEINGOLD: He asked for oral statements. I never
8 spoke to the man until today.

9 TRIAL EXAMINER: The statements that have already been
10 made are sufficient. We'll be in recess for 15 minutes until
11 4:00 p.m.

12 (A short recess was taken.)

13 TRIAL EXAMINER: On the record.

14 Are you ready to proceed?

15 MR. SOMERS: Yes.

16 CROSS EXAMINATION

17 Q (By Mr. Somers) Mr. Sandler, prior to testifying today,
18 did you have any discussions with regard to this case with
19 Mr. Marrow?

20 A I did.

21 Q When was the first time you met Mr. Marrow and discussed
22 this case with him?

23 A Two or three weeks ago he called me on the phone I guess.

24 Q Is that the first time you discussed the case with him?

25 A I would say so.

1 MR. FEINGOLD: Objection.

2 TRIAL EXAMINER: I'll sustain that as to the form. You
3 have at least a double question there.

4 Q (By Mr. Somers) Weren't you directly responsible to
5 Mervyn and Sam Lentz, the owners of the company?

6 A Definitely.

7 Q And you had to account to them for everything you did,
8 isn't that true?

9 MR. FEINGOLD: Objection.

10 TRIAL EXAMINER: Overruled.

11 THE WITNESS: I would say so.

12 Q (By Mr. Somers) Now, you stated with regard to an em-
13 ployee named Sidney Pellet that you told management that he
14 was not doing his job in his area, that you told Stanley
15 Goldstein that he should be let go due to the way he was con-
16 ducting himself in his territory, is that correct?

17 A Right.

18 Q Mr. Sandler, you know why Mr. Pellet was let go, don't
19 you?

20 MR. FEINGOLD: I object to it.

21 TRIAL EXAMINER: Overruled.

22 THE WITNESS: Yes, I do.

23 Q (By Mr. Somers) He was let go for dishonesty, isn't
24 that correct?

25 A Correct.

1 Q And you had nothing to do with the decision?
2 A I didn't say that I did. I only recommended.
3 Q What did you say in your recommendation, and to whom were
4 you speaking?

5 A I recommended to Mr. Goldstein. At the time I said Mr.
6 Pellet is dishonest. I suggested he be brought in and let go.
7 Q Mr. Pellet was a wine man, wasn't he?

8 A Right.

9 Q Was he responsible to you?
10 A Well not necessarily responsible to me, but it was part
11 of the image that was out there as far as Brescome concerned.
12 Q Mr. Goldstein was aware prior to your talking to him about
13 these shortages, wasn't he?

14 MR. MARROW: Objection.

15 THE WITNESS: I do not know. He might have been.

16 MR. MARROW: I objected because he was asking for Mr.
17 Goldstein's state of mind.

18 TRIAL EXAMINER: The objection is overruled.

19 Q (By Mr. Somers) Wasn't it a matter of knowledge among
20 management that Mr. Pellet was constantly short on funds?

21 MR. PEINGOLD: Don't answer that question. Objection.

22 TRIAL EXAMINER: All right, sustained.

23 Q (By Mr. Somers) And Mervyn Lentz or Stanley Goldstein
24 discussed Mr. Pellet's shortage of funds with you prior to
25 your going to Mr. Goldstein?

1 A I can't recall that.

2 Q After your discussion with Mr. Goldstein, do you know
3 what happened?

4 A Mr. Goldstein I think brought Mr. Pellet in. I'm not
5 sure. When, I don't know.

6 Q So Mr. Goldstein apparently investigated this indepen-
7 dently, didn't he?

8 A I would say so, after I brought in the facts.

9 Q And subsequently to your knowledge, Mr. Pellet was let
10 go?

11 A I guess so.

12 Q Now, you stated that you interviewed Mr. Deutsch. Do
13 you know how many interviews Mr. Deutsch had before he was
14 hired by Brescome?

15 A One or two I guess.

16 Q How many interviews did he have with you?

17 A One.

18 Q And do you know if he had any other interviews with
19 Mervyn Lentz?

20 A He had one with Mr. Lentz.

21 Q Without you being present?

22 A It could be. I don't recall. It might have been.

23 Q When did you ---

24 MR. FEINGOLD: Let him finish his answer to the question,
25 please.

1 Q (By Mr. Somers) Had you completed your answer?

2 A Yes.

3 Q When did you first learn that Mr. Deutsch had been hired?

4 A I don't recall.

5 Q Do you recall who told you Mr. Deutsch had been hired?

6 A I guess Mr. Lentz must have told me.

7 Q Mervyn Lentz?

8 A Yuh.

9 Q Mr. Sandler, do you recall what your salary was?

10 MR. FEINGOLD: If he opens up that, then I'm going to
11 insist they disclose what the other salaries were, because
12 when I tried to get this information from other witnesses,
13 all hell broke loose in this room. Now, we can't have two
14 rules of evidence.

15 MR. MARROW: I might add that I purposely avoided that
16 because of the prior rulings in that area.

17 TRIAL EXAMINER: All right, gentlemen, I'm aware of the
18 situation previously. Mr. Somers, do you want to give me some
19 particular pertinent reason for this?

20 MR. SOMERS: Well, I think in relation to what other
21 salesmen were receiving, this does have relevance.

22 TRIAL EXAMINER: Well, previously on your objection I
23 restrained others from giving specific amounts. Now, does
24 this mean you're changing your stand?

25 MR. SOMERS: I'll withdraw the question.

1 Q (By Mr. Somers) Mr. Sandler, do you know if there were
2 any other salesmen making within one or two thousand dollars
3 of what you were?

4 MR. FEINGOLD: I'm going to object. He's trying to do
5 the same thing.

6 TRIAL EXAMINER: Overruled.

7 THE WITNESS: There may have been one.

8 Q (By Mr. Somers) Now, isn't it true that you also received
9 from the employer some money for the education of your children?

10 MR. FEINGOLD: I'm going to object to that.

11 TRIAL EXAMINER: Overruled.

12 THE WITNESS: I never received anything as far as educa-
13 tion is concerned. I had no deals in education.

14 Q (By Mr. Somers) Did you receive any bonuses?

15 A No.

16 Q Didn't you receive a bonus to help defer the educational
17 costs of your children?

18 A The only thing I received was 25 hundred dollars when
19 they let me go.

20 Q Did you receive anything in addition or over the contract
21 amount?

22 A No.

23 Q Now, with regard to the sales meetings that took place,
24 these sales meetings were not weekly meetings, were they?

25 A Pardon?

1 Q You didn't have a sales meeting every Friday, did you?

2 A Almost every Friday.

3 Q And the agenda for the sales meetings had to be approved
4 by Mervyn Lentz or Sam Lentz, isn't that true?

5 A We discussed them.

6 Q Could anything be ---

7 MR. FEINGOLD: I can't hear. There's too much noise
8 going on there.

9 (Pause.)

10 Q (By Mr. Somers) Isn't it true that nothing could be
11 discussed at a sales meeting unless it was previously approved
12 on an agenda set before the sales meeting?

13 A An agenda was set up, and we would discuss it, and if
14 everything wasn't in accordance, we took it out.

15 Q If Mervyn Lentz didn't want it discussed, it wasn't?

16 A It could be.

17 Q Isn't that so? He had the final say?

18 MR. FEINGOLD: I'm going to object to the rapid fire of
19 questions.

20 THE WITNESS: If he wanted to cut it out, it could be.
21 It's up to him.

22 Q (By Mr. Somers) As far as the programs for these meetings,
23 isn't it true that many of the programs were in fact set up
24 by the Distillers themselves as to what the content would be
25 of this presentation?

1 A In most cases, yes.

2 Q I see; and prior to any actual commitment being made as
3 to a Distiller being allowed to come in and speak at a specific
4 sales meeting, this was cleared with Mervyn Lentz, isn't that
5 true?

6 A It was cleared with Mervyn Lentz, yes.

7 Q All right now, you stated that part of your functions
8 were to keep accounts in a good frame of mind. Isn't this
9 true that this is a normal function of a salesman anyway, to
10 keep his accounts in a good frame of mind and friendly toward
11 the company?

12 A In many cases I find that a salesman can't do that. Maybe
13 in certain areas there is problems that come up.

14 Q But this is the function of the salesman?

15 A To try, yes. He is trying, that's right.

16 Q Now, you stated that you handled delivery problems.
17 Isn't it true that salesmen would often speak to drivers
18 concerning deliveries to their customers?

19 A What was that?

20 Q Isn't it true that salesmen would often speak to the
21 drivers concerning the delivery to their customers?

A Salesmen would talk to the drivers?

Q Right.

A Possibly.

Q In fact if a salesman wanted a certain load to be delivered

1 first thing in the morning, he may go to the driver and tell
2 him that this should be the preference?

3 A I don't think he went to the driver. He went to the one
4 in charge of the area of traffic-- the Traffic Manager or
5 Warehouse Manager or whatever you want to call him.

6 Q Now, you stated that you would often sit with Mr. Mervyn
7 Lentz and I believe Sam Lentz to put together a contest or a
8 program with the purveyors?

9 A And Mr. Goldstein, too.

10 Q Now, in fact could you put into effect any contest or
11 program without the specific okay of either Mervyn or Sam
12 Lentz?

13 A Well, I think it was in most cases a discussion among
14 the four of us. Mr. Sam Lentz and Mr. Mervyn Lentz and Mr.
15 Goldstein and myself, and there was a meeting of the minds,
16 and in the majority of cases if the majority thought it was
17 a good program, we went along with it.

18 Q If Mr. Mervyn Lentz or Sam Lentz didn't feel it was a
19 good program, would it be put into effect?

20 A I would say no.

21 Q Now, with regard to the setting of quotas, isn't it true
22 that the distillers would often set quotas, the overall quotas.

23 A Certainly. In some cases the distiller would come in and
24 discuss quotas and get a meeting of the minds of Mr. Lentz and
25 Mr. Goldstein and myself to see whether the quotas were realistic

1 or not.

2 Q Who had the final say as to whether the quota was realis-
3 tic or not?

4 A The final say, I would say, would be the group -- Gold-
5 stein, Mr. Mervyn Lentz, Mr. Sam Lentz and myself.

6 Q If Mervyn Lentz or Sam Lentz believed it wasn't realis-
7 tic or that the quota wasn't good as you recommended, in fact
8 it wouldn't be put into effect?

9 A I would say that is their privilege.

10 Q They were the owners?

11 A Right.

12 Q They ran the business?

13 A If they are the owners, they are in the business.

14 Q They ran the business, I said.

15 A That's right.

16 Q Now, once you have the overall quota established, then
17 you break it down or it would be broken down by each salesman,
18 isn't that correct, for each salesman?

19 A Right.

20 Q All right now, when you had the overall quota figure,
21 actually breaking it down for each salesman was a percentage
22 basis? It was a mathematical basis, isn't that correct?

23 A True.

24 Q So in fact if anybody had the overall quota, they could,
25 using that figure, break it down for all the salesmen, isn't

1 that true?

2 A It's possible.

3 Q Now, you stated that you had a filing cabinet which con-
4 tained quota sheets and information on every man and his
5 accounts. Isn't it true that these were not in fact your
6 sole filing cabinets, but cabinets that were available to
7 Mr. Guttermann as well as others?

8 A True.

9 Q Could any purveyor participate in a sales meeting without
10 the okay of either Mervyn Lentz or Samuel Lentz?

11 A I guess they could.

12 Q To your knowledge did any purveyor ever participate in a
13 sales meeting without the okay of Mervyn or Sam Lentz?

14 A Did not?

15 Q Did they ever participate without Mervyn Lentz's or Sam
16 Lentz's okaying them?

17 A I guess if they didn't want them to go, they could stop
18 them.

19 MR. FEINGOLD: I move to strike it out; that's not the
20 question. I think the question was in the affirmative.

21 THE WITNESS: I think it's ridiculous.

22 MR. SOMERS: I object to the witness characterizing the
23 question. I think it indicates bias.

24 THE WITNESS: They could have stopped the person from
25 going on.

1 TRIAL EXAMINER: Mr. Sandler, do you now remember any
2 occasion?

3 THE WITNESS: No, no.

4 TRIAL EXAMINER: Any occasion in which a purveyor address-
5 ed such a meeting against the wishes of either Mr. Lentz?

6 THE WITNESS: No.

7 MR. FEINGOLD: I don't think that was the question.

8 TRIAL EXAMINER: That was the question I put to him.

9 MR. FEINGOLD: May we have an answer to the question as
10 posed? I would like to have it read back.

11 TRIAL EXAMINER: Mr. Reporter, will you find the question
12 immediately preceding the one I asked?

13 (The question was read by the Reporter as follows:

14 "To your knowledge did any purveyor ever participate in
15 a sales meeting without the okay of Mervyn or Sam Lentz?"

16 MR. FEINGOLD: May we have the answer to that?

17 TRIAL EXAMINER: Just a moment. So the actual transcript
18 will be all in one place, the question was slightly different
19 than I put it to you. Do you know of any occasion?

20 THE WITNESS: I do not.

21 TRIAL EXAMINER: All right, go ahead.

22 MR. SOMERS: Could the Trial Examiner complete the question?

23 TRIAL EXAMINER: The question was does he know of any
24 occasion in which a purveyor addressed the sales meeting with-
25 out the consent of Mr. Lentz, and the answer was no, as I

1 understand it.

2 THE WITNESS: That's right.

3 Q (By Mr. Somers) Now, did you have a desk in the sales
4 room?

5 A I did.

6 Q Was there a phone on that desk?

7 A There was.

8 Q And could other salesmen use that phone if they wished?

9 A They have.

10 Q Now, with regard to the Saturday morning meetings, isn't
11 it true that other salesmen have sat in on those meetings on
12 occasion?

13 A When they were invited in.

14 Q And these were liquor salesmen and wine salesmen?

15 A Right. Liquor salesmen.

16 Q Now, the sheet containing the names of the new accounts,
17 you recall you testified to having received such a sheet? Do
18 you recall that, Mr. Sandler?

19 A I do.

20 Q And do you recall from whom that sheet was received by
21 you?

22 A Usually it was brought to me from the boys in the IBM
23 room -- the men in the IBM room who ran the IBM room.

24 Q Was this a copy?

25 A In some cases Mr. Mendell used to bring it to me.

1 Q Do you know who it was addressed to?

2 A Addressed to?

3 Q Yes.

4 A No, I don't recall.

5 Q Do you recall Mr. Lentz giving you that sheet on numerous
6 occasions?

7 A No.

8 Q Do you recall him ever giving you that sheet?

9 A Yes, he might have given it to me. Most of the time it
10 came out of the IBM room or Mr. Mendell.

11 Q Mr. Lentz usually had a copy of it?

12 A He could have.

13 Q And in fact he did have a copy?

14 A Yuh.

15 Q Didn't that come from the Wholesale Association?

16 A I guess so, yes.

17 MR. MARROW: Would you take your hand away from your
18 mouth? It makes it hard for the Reporter to get everything.

19 Q (By Mr. Somers) Now, with regard to the transfer of
20 accounts, isn't it true that Mr. Mervyn Lentz would have to
21 okay the transfer of any accounts from one man to another?

22 A There was occasions there where accounts were transferred
23 where Mr. Lentz did not okay it. There was occasions there
24 where I had gone to him to have it transferred where we dis-
25 cussed the reason for the transfer.

1 Q You stated there were occasions when Mr. Lentz did not
2 okay the transfer, and the transfer did not take place?

3 A It did go through.

4 Q When was that?

5 A I don't recall. In certain areas where a man is up in
6 Putnam or Danielson where accounts were opening up or in other
7 areas where one man was going in there, I turned it over to the
8 man.

9 Q I'm not talking about an assignment. I'm talking about
10 a transfer.

11 A Transfer?

12 Q Yes.

13 A Most transfers we did discuss.

14 Q And Mervyn Lentz would okay it?

15 A Naturally.

16 Q There were no transfers in fact made without Mr. Mervyn
17 Lentz's okay, isn't that so?

18 MR. FEINGOLD: I'm going to object to that.

19 TRIAL EXAMINER: Overruled.

20 THE WITNESS: I can't recall where there was a transfer
21 made without him putting the okay on it. In most cases we
22 did discuss it.

23 Q (By Mr. Somers) And Mr. Lentz would okay it? If Mr.
24 Lentz didn't okay it, there was no transfer made?

25 A Naturally.

1 MR. FEINGOLD: I object.

2 TRIAL EXAMINER: Overruled.

3 Q (By Mr. Somers) Now, Mr. Sandler, you had about ten or
4 fifteen accounts that you handled, isn't that so?

5 A No, not that many.

6 Q How many?

7 A There might have been seven or eight.

8 Q Could you name those?

9 A Well, there was D&D Package Store, Lafayette Package
10 Store, Deluxe Package Store, Rogers Liquor Store, Ben's Liquor
11 Store. I think that's it. Oh, Towne Liquors. I'm sorry.

12 Q Were these in any specific territory or were they fairly
13 well spread out?

14 A Metropolitan Hartford and West Hartford.

15 Q Did this cover a large geographical area?

16 A No.

17 Q Now, you stated that if a salesman was away or ill that
18 you would pick up his route. Isn't it also true that other
19 salesmen would cover for him?

20 A Not necessarily salesmen. We had people in -- like our
21 merchandiser. I would pick up some accounts and Mr. Amoroso
22 on some occasions would pick up some accounts also.

23 Q If you weren't able to handle them, wouldn't you have
24 another salesman go over and pick up one or two of them?

25 A It's happened, yes.

1 Q Isn't it true that insofar as your benefits and pension,
2 hospitalization, medical, you received the same benefits as
3 the other employees, the other salesmen?

4 A I would say so.

5 Q Now, with regard to the collections, isn't it true that
6 the salesmen make their own collections generally?

7 A It's true, but also there is always a number of accounts
8 that are a little slow, and it requires a little special treat-
9 ment to keep them in the area so he can receive shipment.

10 Q Isn't it true that Mr. Mendell was the man who was gen-
11 erally assigned to follow up on collections?

12 A Mr. Mendell handled collections, and many times he re-
13 quested me, if it were possible, to have me go out, because
14 there was nobody else around to pick up the check in the
15 specific account.

16 Q Now, with regard to displays, isn't it true that dis-
17 plays were allocated quite often by Mr. Guttermann to the cer-
18 tain accounts depending upon the number of accounts that the
19 man had and the type of territory that he covered?

20 A Up to a point. I mean we many times did break them down
21 together. In the areas that we felt that these displays should
22 go into. In other words, I had a better idea of where the dis-
23 plays should go to rather than Mr. Guttermann.

24 Q Wasn't there a general plan as to how the displays were
25 to be distributed?

1 A Depending on the brand. Certain items we had in there,
2 these items in certain areas were stronger than they were in
3 other areas.

4 Q How often during the year would you get involved with
5 allocating displays?

6 A Well, there wasn't a month that didn't go by that some-
7 thing came up.

8 Q Once a month?

9 A Maybe once a month. Maybe twice a month. Maybe once
10 a month.

11 Q Isn't it true that the salesmen work on displays them-
12 selves?

13 A Put them up themselves?

14 Q Yes.

15 A Very seldom.

16 Q But they do in fact do it?

17 A They put up point of sale material.

18 Q What about the wine men?

19 A The wine men have done it, yes.

20 Q In fact the wine men helped to develop some display work
21 themselves?

22 A True.

23 Q In fact some of the liquor men have done that on occasion?

24 A Very rarely.

25 Q But they have done it?

1 A They have, I guess.

2 Q You stated that Mr. Amoroso had four or five men who
3 worked under him. Who were the four or five men that you re-
4 call at any one time?

5 A Oh, Ed Bruno, and he had Mr. Cohen, and he had what's
6 his name -- I can't recall the name now. He just mentioned
7 the name before.

8 Q Mr. Sameloff?

9 A Sameloff, and Pellet worked for him.

10 Q Was Pellet working at the time that Sameloff was working?

11 A No. Sameloff took Pellet's area, and I guess that's it.

12 Q In fact there were probably three men who worked with
13 Mr. Amoroso at one time, not four or five?

14 A Yes, I guess that would be it.

15 Q Do you recall if Mr. Amoroso ever discussed the setting
16 of the overall quotas with you?

17 A What overall quotas?

18 Q For wine.

19 A No, I can't recall that.

20 Q In fact you had nothing to do with any wine quotas, isn't
21 that true?

22 A True.

23 Q You stated that Mr. Amoroso ran sales meetings. Can you
24 recall a specific sales meeting that he ran?

25 A I recall he set up a meeting around the introduction of

1 Italian Swiss Colony Wines when we introduced the different
2 flavors like the Cuba Libra and the Zombie. I think there
3 were four or five types he introduced to his men.

4 Q In other words, see if I'm correct. When you say he ran
5 a meeting, you mean he participated and spoke at the meeting?

6 MR. FEINGOLD: I object to that.

7 TRIAL EXAMINER: Overruled.

8 THE WITNESS: He introduced the program -- introduced the
9 advertising or displays; and chances are, he set up the quotas
10 with the individual men. I know each man had a certain loca-
11 tion to hit for the month.

12 Q (By Mr. Somers) Do you know for a fact if he set up the
13 quotas? Did you observe him setting up the quotas?

14 A Well, I know he had a quota for each one of the men at
15 the time.

16 Q Do you don't know how the quotas were arrived at?

17 A I guess ---

18 Q Do you know?

19 A No, I can't say I know, no.

20 Q When you say that Mr. Amoroso assigned quotas, in fact,
21 is this true, that Mr. Amoroso handed out a sheet which con-
22 tained the quota?

23 A True.

24 Q Now, do you recall your meeting in Mr. Adinolfi's office
25 where there was a ballot taken?

1 A Uh huh.

2 Q And do you recall the ballot was on a piece of paper?

3 A Uh huh.

4 Q And do you recall that the men there marked their pref-
5 erence and then folded the piece of paper?

6 A Right.

7 Q And gave it to someone who counted them?

8 A Right.

9 Q In fact this was a secret ballot?

10 MR. FEINGOLD: I object to that.

11 TRIAL EXAMINER: Mr. Somers, you are now entrenching on
12 grounds that I kept ---

13 MR. SOMERS: I withdraw the last question.

14 TRIAL EXAMINER: All right. I better finish my statement --
15 that I kept Mr. Feingold from pursuing.

16 Q (By Mr. Somers) Did you display your ballot to the other
17 employees?

18 A You mean show it?

19 Q Yes.

20 A No.

21 Q Do you recall that you stated at a meeting that you didn't
22 think that Brescome needed an outside affiliation and then you
23 went on, do you recall that?

24 A Yes.

25 Q Now, were the statements you made in your own words?

1 A No, no. Up to a point it was.

2 Q Were you speaking from a speech?

3 A It was sort of a speech -- no, let's see how it happened.

4 I think Mervyn Lentz had some kind of a form there, and I read
5 it over. It made sense, and then I injected some of mine in
6 there, too.

7 Q Did you have the form in front of you when you spoke?

8 A No.

9 Q Do you recall what the form was?

10 A It was a mimeographed piece of paper or a kind of piece
11 of paper.

12 Q Were the statements that you made your sentiments, an
13 expression of your sentiments?

14 MR. FEINGOLD: I'm going to object to that.

15 TRIAL EXAMINER: Well, I'll sustain that. Mr. Somers, do
16 you want to be heard on that?

17 MR. SOMERS: I think it's important because of the con-
18 flict here as to this man's authority and who he was speaking
19 for, that we know if he was speaking his own sentiments.

20 TRIAL EXAMINER: If he were a supervisor, and I don't
21 pass on that at this point, it doesn't seem to me it makes
22 any difference; and if he weren't a supervisor, likewise, it
23 doesn't make any difference.

24 Q (By Mr. Somers) Nobody wrote that speech for you, did
25 they?

1 MR. FEINGOLD: I object.

2 TRIAL EXAMINER: Overruled.

3 THE WITNESS: I would say that it came from somebody --
4 that speech.

5 Q (By Mr. Somers) Did you voice any objection to making
6 these statements in front of the salesmen?

7 MR. FEINGOLD: I object.

8 TRIAL EXAMINER: Overruled.

9 THE WITNESS: No. I believe in what I said.

10 Q (By Mr. Somers) Mr. Sandler, did you ever have any
11 authority to sign checks on behalf of Brescome?

12 A No.

13 Q Did you have any authority to pledge the credit of Brescome?

14 A No.

15 Q Was there ever any occasion when you had to take two or
16 three days off from work?

17 A Yes.

18 Q And would you request to be permitted to take the two or
19 three days off from Mervyn or Sam Lentz?

20 A The reason was to inform them that I wouldn't be in and
21 they would have to cover up my area.

22 Q Well, could you go away without notifying Mr. Lentz?

23 A I don't think it was a proper thing to do.

24 Q Do you recall if you ever saw a profit and loss statement
25 of Brescome Distributors?

1 A I have seen a profit and loss statement.
2 Q Do you recall who showed it to you?
3 A Mr. Sam Lentz.
4 Q Do you recall when?
5 A I was there several months when he showed it to me.
6 Q Do you recall who was present?
7 A No, I think just he and I.
8 Q Did you have a key to the office?
9 A No, I never wanted one.
10 MR. SOMERS: I move that the latter part be stricken as
11 not responsive.

12 TRIAL EXAMINER: No, I won't strike it.
13 Q (By Mr. Somers) Did you ever order stock for the employer?
14 A Ever order stock? What kind of stock?
15 Q Stock to be kept in the warehouse. Inventory.
16 A I never ordered it, but I discussed with Mr. Goldstein
17 on what to buy on numerous occasions.

18 MR. SOMERS: May I have a couple of moments?

19 TRIAL EXAMINER: Yes.

20 (Pause.)

21 TRIAL EXAMINER: Mr. Somers, do you have any further
22 questions?

23 MR. SOMERS: Yes.

24 Q (By Mr. Somers) Mr. Sandler, isn't it true that on the
25 basis of your prior sales experience and on the basis of your

1 background in the liquor industry that your main job was to
2 work with the men to help them and assist them in sales?

3 A Give me that slowly again?

4 TRIAL EXAMINER: Mr. Reporter, would you read that, please?

5 (The pending question was read by the Reporter.)

6 MR. FEINGOLD: I object to the form of the question.

7 TRIAL EXAMINER: Overruled.

8 THE WITNESS: I don't agree. I don't know, with my back-
9 ground, that was the only part of my responsibility. There
10 was also in the areas of developing brands, marketing brands,
11 merchandising. That's part of my background. Also my back-
12 ground is guiding distributors and guiding salesmen since 1933.
13 I've been in many, many markets developing brands, working
14 with distributors.

15 Q (By Mr. Somers) All right, Mr. Sandler, isn't it this
16 past experience that you have had, isn't this an invaluable
17 asset in helping and assisting the salesmen?

18 A Part of it, yes, sir.

19 MR. FEINGOLD: Excuse me.

20 MR. SOMERS: I have nothing further.

21 TRIAL EXAMINER: The objection to the last question, if
22 was an objection, is overruled. Mr. Marrow?

23 MR. MARROW: Yes.

24 REDIRECT EXAMINATION

25 Q (By Mr. Marrow) You testified in response to a question

1 put to you by Mr. Somers that there were occasions when sales-
2 men were absent and other people would fill in their territory
3 and cover their accounts. Do you recall that?

4 A Yes.

5 Q Who made the assignment on those occasions?

6 A I did.

7 Q Now, with respect to the speech or comments that you
8 made to the sales group, did that come after Mr. Lentz made
9 some remarks to the salesmen?

10 A Talking now about the meeting? During a meeting?

11 Q When you made a speech or ---

12 A That he would follow up?

13 Q No, no. I'm talking about a particular occasion at
14 which you testified you made some remarks about the inside
15 union versus the outside union.

16 A Yuh.

17 Q Did you talk after Mr. Lentz?

18 A I would say so, yah.

19 Q Now, do you recall whether you had a discussion prior to
20 that meeting with Mr. Lentz about what you were going to say
21 or do at that meeting?

22 A Yah, I discussed with him before that.

23 Q Before you went to the meeting?

24 A Before we had the meeting.

25 Q Where did the discussion take place?

1 A In Mr. Lentz's office.

2 Q Is that when you saw the speech or the paper that he had?

3 A I guess so, yuh.

4 Q Now, do you recall what if anything Mr. Lentz told you to
5 do with respect to the remarks that you were going to make?

6 A No. He asked me to read it, and if it made sense to
7 present it to the boys.

8 Q Following the text that he had given you?

9 A The what?

10 Q Following the text on the paper that he had given you?

11 A Following what text?

12 MR. SOMERS: Objection, leading.

13 TRIAL EXAMINER: All right, sustained.

14 Q (By Mr. Marrow) Did he indicate what you were to say or
15 what he wanted you to talk about?

16 A It was on that paper.

17 Q Now, a question has arisen with respect to the transfer
18 of accounts as distinguished from the initial assignment of
19 accounts. Do you recall any occasions when you directly trans-
20 ferred an account from one salesman to another without con-
21 sulting first with Mervyn Lentz or Sam Lentz?

22 A Offhand, no, I can't. I know I transferred accounts; and
23 chances are I informed him that this particular account is
24 going to this particular salesman.

25 Q After you made the assignment?

1 A I recommended it.

2 Q Now, are acquainted with a salesman named Leahy?

3 A Right.

4 Q Do you recall any instances where accounts were trans-
5 ferred from one salesman to Mr. Leahy?

6 MR. SOMERS: Objection. This is getting into a new
7 area.

8 TRIAL EXAMINER: No, overruled.

9 THE WITNESS: Yes, there was an account, a drugstore --
10 in fact two drugstores where one salesman had a run-in with
11 the owner, a personality clash, and the owner didn't want this
12 particular salesman to call on him, and I suggested at the
13 time that being that Mr. Leahy was in the area he take over
14 the account.

15 Q Who did you suggest that to?

16 A Mr. Lentz.

17 Q And was Mr. Leahy transferred to that account?

18 A Yes.

19 MR. MARROW: I have no further questions.

20 MR. FEINGOLD: No further questions.

21 TRIAL EXAMINER: Mr. Somers?

22 MR. SOMERS: Yes.

23 RECROSS EXAMINATION

24 Q (By Mr. Somers) If a salesman is absent, in most instances
25 who would cover his territory while you were ---

1 MR. FEINGOLD: I object.

2 TRIAL EXAMINER: Overruled.

3 Q (By Mr. Somers) --- while you held the position that you
4 held.

5 A If thesalesman was absent?

6 Q If a salesman called in ill, who would cover the territory?

7 A I would have alternatives with maybe the merchandising
8 man, Victor, if he was able to do it; or I would in some cases
9 where Mr. Amoroso and myself would split up the accounts and
10 take over.

11 Q Did you go to Mr. Bonaiuto to ask him if he was able to
12 handle this?

13 A Right.

14 Q And if he was busy at that time then you would do it or ---

15 A I would step in, yes. It had to be covered.

16 MR. SOMERS: I have nothing further.

17 MR. MARROW: No further questions.

18 MR. FEINGOLD: No further questions.

19 TRIAL EXAMINER: You're excused, sir. Thank you very
20 much.

21 (Witness excused.)

22 TRIAL EXAMINER: On the record. We will be in recess
23 until 9:30 tomorrow morning.

24 (Whereupon, at 5:30 o'clock p.m., the hearing was
25 adjourned until 9:30, Tuesday, February 27, 1968, same place.)

1 TRIAL EXAMINER: I'll make it very simple. All of
2 the rejected exhibits of any parties may be put into the
3 rejected-exhibit file as if applied to the Court Reporter.

4 MR. FEINGOLD: Thank you.

5 TRIAL EXAMINER: Mr. Somers?

6 MR. SOMERS: I would like to call Mr. Amoroso.

7 Whereupon,

8 FRANK RALPH AMOROSO

9 was called as a witness by and on behalf of the Respondent,
10 and, having been first duly sworn, was examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 Q (By Mr. Somers) Would you state your name and address
14 for the record?

15 A My name is Frank Ralph Amoroso. I live at 23 Lincoln
16 Lane, Simsbury, Connecticut.

17 Q And who are you employed by, Mr. Amoroso?

18 A Brescome Distributing Company.

19 Q How long have you been with them?

20 A Three and a half years.

21 Q Now, could you describe for us your duties at
22 Brescome?

23 A Well, my basic duties, I am a wineman or specialist;
24 and my basic duty is I am responsible for a total of around
25 80 accounts that I sell wines to. I have three men that we

1 work together in the Wine Department who I do give assistance
2 to and help when it pertains to wines.

3 I receive quotas from Italian Swiss and get approval
4 from Mr. Lentz, and we go over the quotas and set up the
5 quotas monthly for the men; and each week we sit down
6 and review----

7 MR. FEINGOLD: Whom do you mean, "we"?

8 THE WITNESS: The three winemen -- Bruno Golasky,
9 Alfred Cohen and Larry Sameloff. And there are other duties
10 which I do in helping the whiskey men when it pertains to
11 a wine list in restaurants, a wine display, new wine room
12 setups in package stores and anything that pertains to
13 wine. This is where I fit in my category.

14 Q (By Mr. Somers) Now, do you have any duties with
15 regard to the assignment of accounts?

16 A No.

17 MR. FEINGOLD: I object to that as leading.

18 TRIAL EXAMINER: Overruled..

19 Q (By Mr. Somers) Do you know how accounts are assigned
20 in the wine area?

21 MR. FEINGOLD: I object to it as leading.

22 TRIAL EXAMINER: Overruled. You may answer.

23 THE WITNESS: Well, when I----

24 TRIAL EXAMINER: The question is do you know how.

25 THE WITNESS: Yes, I do.

1 Q (By Mr. Somers) Tell us how.

2 A When I was employed by the Brescome Distributing
3 Company,----

4 MR. FEINGOLD: I'm going to object.

5 TRIAL EXAMINER: Mr. Amoroso, whenever you use
6 terminology such as "I guess," "I imagine," or "apparently,"
7 we're going to get in trouble. We only want to know what
8 you know from observation, from what you have heard, from
9 what you have done or seen done. Go ahead.

10 THE WITNESS: Our area that we cover is five counties,
11 and they took and split the area, being there is three or
12 four wine men at that time involved in selling this vast
13 area. They split it into areas with boundaries so there
14 is a shore area; there is a northern area; there is a middle
15 and southern area; and this is the way the men cover the
16 routes, according to the areas.

17 Q (By Mr. Somers) Now, do you have any duties with
18 regard to the holding of meetings of salesmen?

19 A We have a so-called meeting every Friday. We review
20 what we can do to improve sales, any problems that they
21 have on the road that I can help them with or assist them
22 with and how we're doing in sales basically.

23 Q How are these meetings set up?

24 A It's a very informal thing. There are only four men.
25 We sit around the table and discuss the problems of last

1 week and plans of next week and how we can help each
2 other improve sales.

3 Q And do you know who called these meetings?

4 A It's a rather informal thing.

5 MR. FEINGOLD: I object to the "think" and move
6 to strike the answer out.

7 THE WITNESS: Well,----

8 MR. FEINGOLD: Excuse me.

9 TRIAL EXAMINER: Just a moment. Let me take the
10 witness' answer first, and I'll decide whether any part
11 of it should be stricken.

12 MR. FEINGOLD: May we have the question please?

13 TRIAL EXAMINER: The question is who called these
14 meetings if anyone.

15 THE WITNESS: Mervyn Lentz usually calls the meetings.
16 It used to be Mr. Sam Lentz; and I sit down with the men
17 and review it.

18 Q (By Mr. Somers) Now, have there been meetings which
19 involve not only the wine salesmen but the liquor and the
20 whiskey salesmen?

21 A I have sat in on many of those meetings.

22 Q Have you ever conducted those meetings?

23 A Not myself, no sir.

24 Q Do you know how it is arranged as to what happened in
25 those meetings?

1 A Yes. Mr. Mervin Lentz and Mr. Reuben now, and I
2 believe they all sit around and discuss about quotas.

3 MR. FEINGOLD: I can't hear you.

4 THE WITNESS: I have seen Mr. Lentz and Mr. Reuben,
5 who is now the whiskey man, sit around and discuss the plans
6 and discuss with the supplier at that meeting.

7 Q (By Mr. Somers) Now, going back to the period of
8 preceding Mr. Sandler's leaving the company, do you recall
9 how the meetings were arranged as to the content --
10 the same meetings?

11 A I have seen no change when he was there.

12 MR. FEINGOLD: I move to strike it out as not responsive.

13 TRIAL EXAMINER: Overruled.

14 Q (By Mr. Somers) Who set up the content of the meeting?

15 A Usually Mervin Lentz or Sam Lentz. Now Mr.
16 Reuben and Mervyn Lentz.

17 Q Now, what are your duties if any with regard to the
18 quotas?

19 A Well, the quotas are set by the wine companies or
20 suppliers that we receive our products from, and they are
21 in turn sent to----

22 MR. FEINGOLD: I can't hear you, Mr. Amoroso.

23 THE WITNESS: I'm directing my answers there, sir.
24 I'm sorry.

25 MR. SOMERS: You can speak to me. That's all right.

1 If Mr. Feingold would like to move up, that's all right.

2 TRIAL EXAMINER: Gentlemen, let's do this in an
3 orderly fashion. If you can raise the volume of your
4 voice a little bit, it will help.

5 THE WITNESS: The quotas are set by the suppliers
6 such as Italian Swiss Colony Wines. They are set
7 monthly according to what product they want increased
8 and what percentages. They are sent or given to Mr. Lentz
9 or Mr. Samuel Lentz or Mr. Reuben now, and they sit down
10 and decide whether it's a fair quota or whether it's a
11 contest or promotion. We discuss the pros and cons; and
12 Mr. Lentz will say to me, "We're going to have a ten per cent
13 increase or a 12 per cent increase. We're going to have a
14 promotion of radios as a contest if they hit a certain
15 quota," and then I discuss this with the men at the
16 beginning of the meeting.

17 Q (By Mr. Somers) Now, you stated that you're responsible
18 for 80 accounts. Could you estimate for us approximately
19 how much of your time during the average week is spent in
20 handling accounts and selling wines and handling wine tastings?

21 A Handling wine tastings and covering accounts and
22 handling problems pertaining to wine take me 85 per cent
23 of my time.

24 Q And how often are you in the Brescome plant during
25 the week -- about how many hours would you say?

A Well, I go in every morning, and I plan my day's work
because the day before there can be important problems
or get my wines drawn for the wine tasting that evening,
take care of any correspondence pertaining to wine tastings
or wine lists and so on. I give out whiskey that the men
draw for delivering that day or something, and the men will
sit around, the two whiskey men, and if there aren't any
problems, I'll take off and take care of my day's duties.

MR. FEINGOLD: He didn't answer the question, how many
hours does he spend in the office. May we have an answer
to that question?

TRIAL EXAMINER: All right. Do you want to follow up,
Mr. Somers?

MR. SOMERS: My next questions is what he would do
during those hours, and I think he has answered it.

MR. FEINGOLD: I would like an answer to how many
hours he spends in the office.

TRIAL EXAMINER: You're going to get an opportunity
to cross examine.

Q (By Mr. Somers) Do you at any time perform any duties
in the warehouse?

A Yes, I do. Occasionally there is emergencies, problems
that we all do. I do help in the warehouse, to answer
you direct.

Q Have you ever hired any employees, Mr. Amoroso?

1 A No, sir.

2 MR. MARROW: Objection. Limited to rebuttal. I
3 don't think there was any testimony that this man hired
4 anybody.

5 TRIAL EXAMINER: All right, I'm not going to strike it.
6 I think it's literally or technically correct.

7 Q (By Mr. Somers) Did you participate in the hiring of
8 Mr. Sameloff?

9 MR. FEINGOLD: Objection.

10 TRIAL EXAMINER: Overruled.

11 THE WITNESS: Yes. What I did is when Mr. Sameloff
12 applied for a position, being the wine man, Mr. Lentz asked
13 me would I talk to the man and see what his experience and
14 knowledge was, and I did; and then he in turn went to Mr.
15 Stanley Goldstein, and he went in to see Mr. Goldstein:
16 and from there he went to see Mr. Mervyn Lentz. Mr. Lentz
17 came out and said to me that he had hired him, and that was
18 it.

19 Q (By Mr. Somers) Did you participate or have any role
20 in the discharge of any employees, do you recall?

21 MR. FEINGOLD: Objection.

22 TRIAL EXAMINER: Well, I'm going to take the testimony.
23 I think that it goes a little beyond rebuttal.

24 MR. FEINGOLD: I was blocked with Mr. Sandler right
25 down the line absolutely.

1 TRIAL EXAMINER: I don't think that has anything to do
2 with the present problem, Mr. Feingold.

3 MR. FEINGOLD: I certainly think it does.

4 TRIAL EXAMINER: All right, the objection is overruled.

5 MR. FEINGOLD: I respectfully except.

6 TRIAL EXAMINER: Go ahead.

7 MR. SOMERS: Do you recall the question?

8 TRIAL EXAMINER: Gentlemen, I said something to you
9 off the record that perhaps should be on the record
10 with respect to this last ruling. I try to adhere to the
11 technical rules of evidence and the time for producing
12 evidence. Up to the point where I think it interferes
13 with the taking of testimony or other evidence that will
14 be very very useful in determining issues before me, I
15 think this is one of those occasions. That's the reason
16 I am stretching the rule.

17 MR. FEINGOLD: I respectfully submit there were items
18 with respect to Mr. Sandler's testimony that were cut off
19 on objection by the Respondent on the ground that I was
20 going outside the sphere of rebuttal testimony, and that
21 only happened yesterday. My memory is pretty good on it.
22 I was cut off even though----

23 TRIAL EXAMINER: You may be right. I don't really
24 remember, but I am going to take this witness' answer to
25 this question. I think that Mr. Somers perhaps could have

1 called him at an earlier time, but the point is too important
2 to be cut off at a technical level.

3 You better repeat the question, Mr. Somers.

4 Q (By Mr. Somers) Have you ever participated in any
5 way in the discharge of any employee?

6 A No.

7 Q Do you recall a Mr. Sidney Pellet that worked for the
8 Employer?

9 A Yes.

10 Q And do you recall the circumstances of his discharge?

11 A Yes, I do. I was instructed by Mervyn Lentz to
12 go down to the southern area to investigate in a few
13 stores that he had complaints that Mr. Sameloff was----

14 Q Mr. Sameloff?

15 MR. FEINGOLD: I object to this. He said Sameloff.

16 THE WITNESS: I'm referring to Mr. Sidney Pellet. I'm
17 sorry. He was doing something that wasn't just right, and
18 I went down to the package stores and investigated and
19 found that Mr. Pellet was getting whiskey and selling it
20 and doing things of a very improper, and in plain English,
21 he was stealing. I came back with my report to Mervyn
22 Lentz and Sam Lentz, and they took it from there on. I
23 did nothing after that.

24 Q (By Mr. Somers) About how often are wine tastings
25 conducted by----

1 MR. FEINGOLD: I'm going to object to this as not
2 proper rebuttal testimony.

3 TRIAL EXAMINER: I'm inclined to sustain that, Mr.
4 Somers.

5 Q (By Mr. Somers) Are you familiar with an employee or
6 were you familiar with an employee named Bernard Sandler?

7 A Yes, I was.

8 Q And could you tell us what you observed Mr. Sandler
9 doing while he was employed by Brescome and you were employed?

10 A Mr. Bernie Sandler was doing basically what I was
11 doing, but on the liquor phase. I was doing it in the wine
12 phase, and he would do it in the liquor phase -- helping,
13 instructing, selling.

14 Q Now, could you describe what his duties were inasmuch
15 detail as possible from your observation?

16 A Well, he had a certain number of accounts he was
17 responsible for in selling. He would go out and
18 take care of problems that salesmen would submit to him
19 that pertain to whiskey. He would participate in sales
20 meetings. He would sit down with the suppliers and the Lentzes
21 and when their quotas were being set, he would sit down
22 and set them; and every Friday he would review with his men
23 individually how they are doing on their quotas and sales
24 figures.

25 Q Are you familiar with who set the overall quotas?

1 A They were usually set by the suppliers first -- the
2 percentages that they wanted to obtain, and then submitted
3 to Mervyn or Sam Lentz, and they either approved or
4 disapproved them and turned them over to Bernie Sandler.

5 Q Getting back to Mr. Pellet's discharge, do you know
6 if Mr. Sandler played any role with regard to the investigation
7 of Mr. Pellet's conduct?

8 MR. FEINGOLD: I object to the form of the question.

9 TRIAL EXAMINER: Well, I don't know there is anything
10 that's objectionable as to the form.

11 MR. FEINGOLD: I don't know what he means by "the role."

12 TRIAL EXAMINER: The objection is overruled.

13 The question is whether you know that Mr. Sandler had or
14 did not have.

15 THE WITNESS: The only knowledge I had of Mr. Pellet
16 was that Mr. Mervyn Lentz called me into the office and told
17 me to go to the package stores and review the problems
18 that were existing, and I did and found and got the knowledge
19 that was necessary and came back and reported to Mr. Lentz
20 and from there on things took its course.

21 Q (By Mr. Somers) Mr. Amoroso, what were your duties
22 with regard to the setting of policy?

23 A Setting of policy? I never could set them.

24 Q Do you know who set policy?

25 A The Lentzes.

3 1 Q What was your title with Brescome?

2 A Well, I'm called the wine specialist, wine consultant,
3 wine sales manager -- anything that pertains to wines.
4 The titles mean nothing.

5 MR. FEINGOLD: I object to that.

6 TRIAL EXAMINER: The witness' last statement that the
7 title meant nothing is stricken.

8 MR. MARROW: Could I ask that the question before that
9 be read back?

10 TRIAL EXAMINER: Mr. Reporter, will you read the next-
11 to-last question?

12 MR. MARROW: Never mind. I thought of it.

13 Q (By Mr. Somers) Do you have the authority to sign
14 checks for the Employer?

15 A No, sir.

16 Q Do you have a key to the plant?

17 A No, sir.

18 Q Do you have the combination to the safe in the plant?

19 A No, sir.

20 MR. SOMERS: I have nothing further.

21 TRIAL EXAMINER: Mr. Marrow?

22 MR. MARROW: Yes.

23 CROSS EXAMINATION

24 Q (By Mr. Marrow) What do you mean by "policy," Mr.
25 Amoroso?

1 A Well, policy or my impression or my understanding is
2 anything pertaining in our department setting up what the
3 men are going to do, what we who have men under us would
4 tell them to do or assign them to new accounts, et cetera.
5 That's policy -- how it's going to be assigned, et cetera.

6 Q Was there a written policy that existed as far as
7 you know?

8 A No. Always verbal.

9 Q How was it communicated to you?

10 A Mr. Mervyn Lentz would call me in and "I want you to
11 tell Larry Sameloff to do this. I want this account assigned
12 to him."

13 Q When would these meetings take place?

14 A If it was a new account being assigned, when they
15 received it from the Wholesale Liquor Board the new
16 account listings, Mr. Mervyn Lentz would look over them
17 and give me a copy and Bernie a copy and tell us to assign
18 this to Mr. Sameloff or whoever it pertained to in the area.

19 Q Now, in that connection you testified that the territory
20 was divided up amongst the five counties that are solicited
21 by the company. Does each of the three men have a
22 specified territory?

23 A Correct.

24 Q And what territory do you have?

25 A Mine is centralized mainly around Hartford and New Britain

1 and Manchester. I have the hub in here.

2 Q When you said that you were responsible for 80 accounts,
3 does that mean that you personally call on 80 different
4 customers?

5 A No. I have a few package stores assigned to me that I
6 go in occasionally. It's not a weekly call to see if I
7 can help. We're not really allowed to call on package
8 stores selling and soliciting. We can go in there and
9 help them on displays. These are part of my 80 accounts,
10 A and P Package Stores.

11 Q How many would that consist of?

12 A Forty-two or forty-three, so actually I am covering----

13 Q What were the remaining 38 accounts consisting of?

14 A Package stores in Hartford, New Britain, Manchester,
15 Glastonbury.

16 Q And these are called on only by yourself?

17 A For wine, yes, sir.

18 Q For wine. Now, you have testified that you receive
19 quotas from Italian Swiss Colony. Is this the principal
20 wine product that you carry?

21 A This is the major wine line that we are responsible
22 for.

23 Q And what form does that quota come to you in?

24 A I get a copy of that. The original is apparently sent
25 to Mervyn Lentz, and I get a copy, so there is no question
where our quotas are set.

1 Q Do you have occasion to discuss that quota with Mr.
2 Lentz?

3 A He will call me in to review it to see if it's fair,
4 to see if the item is moving and ask me questions about it.

5 Q And when would this take place, on a periodic basis?

6 A Well, if it's next month's quota for March and he
7 received it already, he would call me in sometime this
8 week and review it and decide if it's a fair quota.

9 Q How in turn would the quotas be transmitted to the
10 individual salesmen?

11 A He approves the quota -- if he approves the supplier's
12 quota, I make a copy for each man. We receive that at
13 the beginning of the month.

14 Q Would you break that down according to the territories?

15 A Yes, because each territory represents a percentage
16 of the market.

17 Q Now, do you maintain any files or information on the
18 other winemen that are working these territories?

19 A No. I just maintain a file on our quotas that are
20 submitted by Italian Swiss, any important letters that are
21 sent by either Mervyn Lentz or anybody -- anything pertaining
22 to wine I save. Let me put it this way.

23 Q Well, with respect to these individual assignments
24 that you make, do you keep a copy of the assignments
25 yourself after you have turned one over to the employee?

1 A Yes, I do.

2 Q And do you have a file or someplace where you retain
3 these?

4 A Yes, I do.

5 Q Now, you testified that you get occasionally requests
6 in the form of correspondence to handle wine tastings or
7 wine lists. Who would these requests originate with?

8 A They would come from organizations, associations or
9 restaurants submitting to us that they want a wine man to
10 stop in and discuss their wine list. When it pertains to
11 a wine tasting, it will come from the Holy Name of New
12 Britain who would like a wine tasting March 14th, and would
13 like to book it through L and L Package Store, and I contact
14 the package store and see that he will authorize it and
15 contact the person who wrote the letter and arrange a
16 wine tasting.

17 Q Now, on the occasion when you sent to investigate Mr.
18 Pellet's activities, were these accounts that you also
19 called on?

20 A No, sir.

21 Q How did you introduce yourself to the proprietor?

22 A Well, they knew me because when asked, I cover my
23 own run, but I do go out and help the salesmen when they
24 need help in the stores and set up wine displays for them.
25 On Friday we do a lot of display work together. I'm familiar

1 with every account.

2 Q You knew the proprietors before you went to the store?

3 A Some I knew better than others. Some I didn't know
4 that well.

5 Q And they gave you the information that you were
6 seeking?

7 A I introduced myself, and the problem was so big they
8 were quite concerned.

9 Q They were concerned?

10 A Right.

11 Q Were they familiar or aware of what was going on prior
12 to your coming there, do you know?

13 A No, I don't think they were.

14 Q What information were you seeking from these proprietors?

15 A Did Mr. Pellet owe them any money or borrow any whiskey
16 or wine from them.

17 Q Now, you testified that you observed Mr. Sandler
18 carrying out certain functions and other matters. Are you
19 speaking now of your observation of Mr. Sandler outside of
20 the Brescome home office actually in the field?

21 A Yes, because many times I had occasion to go out with
22 Mr. Sandler because there would be a double problem, a
23 liquor problem and a wine problem.

24 Q You would go together?

25 A Either go together or meet at the place.

1 Q When you say "a problem," what are some examples of
2 problems you encountered?

3 A A problem of like or dislike of a salesman, a problem
4 of not getting the delivery. They would order a wine
5 and get a case order. If it was pertaining to whiskey,
6 Bernie would handle it. We have many many problems that
7 exist with the customer, and we're trying to keep the
8 customer happy.

9 Q You would try to remedy the problems yourselves?

10 A Yes, sir.

11 Q Do you sell whiskey as well as wine?

12 A I won't refuse an order if I am in a store.

13 Q My observation was based on the jacket you're wearing.

14 A Yes. I was fortunate. They handle S and G wines.
15 I helped sell the wines, so they gave me a jacket.

16 MR. SOMERS: Who is "they"?

17 THE WITNESS: Brown Vintners.

18 TRIAL EXAMINER: I think for some unknown reader
19 of the record we should say that Mr. Amoroso has on a very
20 natty blue jacket with brass buttons and a prominent
21 white horse on the left-hand pocket bordered in a yellow
22 octagon.

23 MR. MARROW: I think to the consumer or the person
24 familiar with advertising, it might be recognized as a
25 White Horse label.

1 TRIAL EXAMINER: We've had occasion to spe
2 earlier in the hearing.

3 MR. MARROW: I have no further questions.

4 TRIAL EXAMINER: Mr. Feingold?

5 Q (By Mr. Feingold) Mr. Amoroso, do you have a calling
6 card?

7 A Yes.

8 Q That's printed by Brescome?

9 A Yes, sir.

10 Q Do you have one in your pocket?

11 A No, sir.

12 Q Do you know what's written on that calling card?

13 A Yes.

14 Q Doesn't it say "Wine Manager"?

15 A It says "Wine Sales Manager." It also says "Wine
16 Consultant."

17 MR. FEINGOLD: Excuse me one moment please.

18 (Pause.)

19 Q (By Mr. Feingold) And the card that the salesmen
20 under you, like Sameloff, they just have Wine Salesman,
21 is that correct?

22 A No, sir.

23 Q Do they have Sales Manager on there?

24 A No, sir.

25 Q What do they have?

1 A Wine Specialist, and they also put on Wine Consultant.

2 Q They don't have Wine Sales Manager on their card?

3 A Correct.

4 Q Isn't that correct?

5 A Correct.

6 Q Do you know an organization known as the Brescome
7 Distributors Corporation?

8 A Do I know a---

9 Q Brescome Distributors Employees Association?

10 A Yes, I do, sir.

11 Q Were you a member of it?

12 A Yes, sir.

13 Q Did you apply for membership on or about October 23,
14 1964?

15 A I believe that's when I signed it.

16 Q I show you Charging Party's 51, rejected, and ask
17 you if that's your signature.

18 A That's my signature.

19 Q Did you write the date?

20 A That's my writing.

21 Q Was that about the time you joined Brescome Distributors?

22 A I joined in September of that year.

23 Q And you applied the following month, is that correct?

24 A Yes.

25 MR. FEINGOLD: I offer this in evidence.

1 MR. MARROW: No objection.

2 TRIAL EXAMINER: Charging Party's 51 is received.

3 (The document above-referred to,
4 heretofore marked Charging Party's
5 Exhibit No. 51, heretofore rejected,
6 was received in evidence.)

7 Q (By Mr. Feingold) Are you still a member of that
organization?

8 A No, sir.

9 Q Why not?

10 MR. SOMERS: Objection.

11 TRIAL EXAMINER: I'll overrule that objection, but
12 I don't want to know what your frame of mind is. I am
13 only interested in what was told to you or done or some
14 letter or communication you received or if you resigned.

15 Q (By Mr. Feingold) Isn't it a fact that the organization---

16 MR. SOMERS: Objection. There is a question pending.

17 MR. FEINGOLD: I withdraw the question.

18 TRIAL EXAMINER: No. I want the answer to the
19 question.

20 THE WITNESS: Do you want me to tell my knowledge?

21 TRIAL EXAMINER: Explain the objective circumstances
22 under which you ceased to be a member of the Association.

23 THE WITNESS: I was informed after we had an election
24 at Attorney's office here with Mr. Sandler, we were
25 informed the same time. We were both sitting next to each

1 other. We were no longer a member of the Association.
2 We were a part of Management and no longer a member of the
3 Union.

4 TRIAL EXAMINER: Who told you this?

5 THE WITNESS: I believe Mr. Cohen or Mr. Smith. Either
6 one of them.

7 TRIAL EXAMINER: All right, go ahead.

8 Q . (By Mr. Feingold) Were you an officer of the Association
9 at that time?

10 A I was elected Vice President.

11 Q And do you recall there was a meeting in June of 1957
12 at Mr. Adinolfi's office?

13 TRIAL EXAMINER: All right, this is beyond the rebuttal
14 area.

15 MR. FEINGOLD: Well, I misunderstand the Trial Examiner.
16 I think these are important facts, and I think I should
17 be given the same leeway that was given to the Respondent.

18 TRIAL EXAMINER: Well, this is what happens to a
19 presiding officer when he stretches the rule. I draw the
20 line at this point.

21 MR. FEINGOLD: It should work both ways. It's a
22 two-edged sword.

23 (The pending question was read by the Reporter.)

24 TRIAL EXAMINER: Are you inquiring as to whether or
25 not Mr. Amoroso participated in the vote in Mr. Adinolfi's

1 office concerning which we have had so much testimony?

2 MR. FEINGOLD: Yes.

3 TRIAL EXAMINER: I'll take his answer to that as to
4 whether he participated in that vote.

5 THE WITNESS: Yes, I did.

6 TRIAL EXAMINER: All right.

7 Q (By Mr. Feingold) Do you remember the week before
8 there was a meeting in Mr. Adinolfi's office? Mr. Kelly
9 was presiding?

10 MR. SOMERS: Objection. There is no rebuttal on this.

11 TRIAL EXAMINER: I'm going to sustain the objection.

12 Q (By Mr. Feingold) In that meeting, do you recall
13 the date when the vote was taken?

14 MR. SOMERS: Objection.

15 TRIAL EXAMINER: Overruled.

16 THE WITNESS: I have no idea. I know we went up to
17 vote, and I voted.

18 Q (By Mr. Feingold) Did you participate in the discussion?

19 MR. SOMERS: Objection.

20 TRIAL EXAMINER: Overruled.

21 THE WITNESS: I don't believe there was much discussion.

22 Q (By Mr. Feingold) Did you say anything that day?

23 A No, sir.

24 Q Was the vote taken in booths, closed booths?

25 MR. SOMERS: Objection.

55 1 TRIAL EXAMINER: No. That objection is sustained.

142 MR. FEINGOLD: I except.

143 Q (By Mr. Feingold) Do you recall, Mr. Amoroso, there
144 came a time when you heard that the Distillery Workers Union
145 was trying to organize the salesmen?

146 A The only time I was informed of it was after I was
147 no longer a member of this Brescome Employees, and they
148 told me they were having an outside union represent them.

149 Q You didn't hear anything before that?

150 A The only thing I heard before this, we were going to
151 vote whether we keep our union or accept the union in
152 question.

153 Q The outside union?

154 A Yes, sir.

155 Q Were you ever interviewed by Mr. Mervyn Lentz or
156 Mr. Goldstein?

157 MR. SOMERS: Objection to the characterization of
158 these meetings as interviews.

159 TRIAL EXAMINER: The objection is sustained.

160 Q (By Mr. Feingold) Do you recall having a conversation
161 with Mr. Lentz and Mr. Goldstein about the outside union?

162 A No. The only meeting I had was -- and Bernie Sandler
163 had the same thing -- was what benefits we were getting
164 with the company.

165 Q When was this meeting?

1 A To tell you the truth, I don't know the dates.

2 Q Who was present at this meeting?

3 A Mr. Mervyn Lentz, Mr. Sam Lentz and Goldstein and

4 Mr. Cohen and I both went in at the same time.

5 Q Anyone else?

6 A That's it.

7 Q Was Mr. Sameloff there?

8 A No, sir.

9 Q Was Mr. Golasky there?

10 A Not with us, no, sir.

11 Q Do you recall what was said at this meeting or whatever

12 it was -- interview, conference?

13 A No. They explained the benefits we have, the pension

14 plan, the benefits we receive on the pension plan, the

15 hospitalization. They were just explaining.

16 Q Did they discuss your earnings with you?

17 A I didn't hear you.

18 Q Did they discuss your earnings with you?

19 A No, sir.

20 Q Nothing was said about your earnings and how well

21 you were doing with the company?

22 A They didn't say a word to me about it.

23 Q Was anything said if an outside union came in they

24 may have to give up the profit-sharing plan and the loan

25 aspect of it?

1 A Never said it to me.

2 Q Never heard of it?

3 A Never said it to me.

4 Q Did they say it to anyone else at that meeting?

5 A I don't know.

6 Q You don't remember?

7 A I was only with Mr. Cohen. Nobody else was there.

8 Q How many times did you have such talks with either

9 Mervyn Lentz, Sam Lentz and Stanley Goldstein?

10 MR. SOMERS: Objection. What period?

11 Q (By Mr. Feingold) June and July of 1967 when the

12 Distillery Workers was trying to organize the salesmen.

13 A I only had the one meeting.

14 Q Did you ever address a meeting of salesmen?

15 MR. SOMERS: Objection.

16 Q (By Mr. Feingold) Where you had occasion to discuss

17 the Association and the outside union?

18 MR. SOMERS: Objection.

19 TRIAL EXAMINER: Sustained.

20 MR. FEINGOLD: On what basis? I would like to know

21 the reasons.

22 TRIAL EXAMINER: It's beyond the scope of direct

23 on sur-rebuttal. Such a matter has never been brought up

24 with respect to this witness at any time during this hearing,

25 and I'm not going to start it now.

1 MR. FEINGOLD: I thought on important issues like
2 this the Trial Examiner permitted the Respondent to go
3 way beyond the rebuttal.

4 TRIAL EXAMINER: Mr. Feingold, on the issue on which
5 I permitted that, there had been a previous dispute on the
6 particular point which has figured very largely in the
7 entire hearing. I didn't say I was going to let anybody
8 bring up an entirely fresh subject for the first time.

9 MR. FEINGOLD: This wasn't fresh. Mr. Sandler brought
10 it up.

11 TRIAL EXAMINER: I'm sustaining the objection. I'm
12 sure of my ruling.

13 MR. FEINGOLD: I would like to make the record and
14 ask questions. I think there is a question of credibility
15 too.

16 Q (By Mr. Feingold) Now, Mr. Amoroso,----

17 TRIAL EXAMINER: Just a moment. On that last point,
18 is it your point that you're attacking Mr. Sandler's
19 credibility?

20 MR. FEINGOLD: No. I'm not attacking Mr. Sandler's
21 credibility. I'm attacking this witness' credibility.
22 He said he had just one conversation. I want to refresh
23 his recollection now.

24 TRIAL EXAMINER: I'll sustain the objection to the
25 last question. I'm not precluding you from doing what you

1 just said.

2 Q (By Mr. Feingold) Don't you recall a meeting
3 or a conversation with Mr. Mervyn Lentz when he asked you
4 to address the salesmen with respect to the inside and outside
5 union?

6 A Mervyn Lentz asked me to address?

7 Q Or Stanley Goldstein?

8 A No one asked me to address.

9 Q Did you ever address a meeting of salesmen in which
10 you discussed the inside union?

11 A I did address the men or something.

12 Q And did you discuss the Association at this meeting?

13 A I did not discuss the Association, sir.

14 Q What did you say at that meeting?

15 A I was quite annoyed because of what was happening, and
16 I asked -- they were discussing with us as a group----

17 Q What was happening? What was it that annoyed you,
18 Mr. Amoroso?

19 A Mr. Mervyn Lentz' dad, who has been like a father to
20 every one of us men, he was more of a father to us.

21 Q What annoyed you?

22 A And it annoyed me that these men were doing what they
23 were doing to him, and I got up and told them to----

24 Q What is it that annoyed you?

25 A That a selected few wanted to join an outside union,
and I didn't state outside Union. I said, "What you're

1 doing to this man as he is going to basically retire after
2 he built a company where we made a very good living," I
3 said, "I'm annoyed that you're getting the man disturbed."

4 Q Did you tell them what you're getting disturbed about?

5 A I said that he is disturbed.

6 Q Do you know----

7 MR. SOMERS: Objection.

8 TRIAL EXAMINER: That objection is sustained.

9 Q (By Mr. Feingold) Didn't you mention to them Mr.
10 Amoroso that you were upset that they were trying to
11 bring in an outside union?

12 MR. SOMERS: Objection. This is not credibility.

13 TRIAL EXAMINER: All right.

14 MR. FEINGOLD: I think it's proper cross examination .

15 TRIAL EXAMINER: Let's proceed to your next point. The
16 witness has already testified what he told the men.

17 Q (By Mr. Feingold) Were there any other meetings where
18 you got up and addressed the men?

19 A With reference to what, sir?

20 Q With reference to the very subject we're discussing,
21 Mr. Amoroso.

22 A No, sir.

23 Q You did not. Before that meeting did you have occasion
24 to discuss with Mervyn Lentz what you were going to state
25 to the men at this meeting?

1 A I didn't even know what the meeting was going to be
2 about.

3 Q When did you find out what the meeting was about?

4 A When I was sitting there and heard the address.

5 Q Did you hear Mervyn Lentz speak to the salesmen?.

6 A Yes.

7 Q Did he discuss an inside and an outside union?

8 MR. SOMERS: Objection.

9 TRIAL EXAMINER: Mr. Somers, I'm going to sort of in
10 part reverse my general rulings before. Principally because
11 I have not given sufficient weight to the problem of
12 credibility. I think I am going to have to permit some
13 leeway considering the importance of the witness and the
14 late time at which he was called. I'll permit that question.

15 THE WITNESS: May I have the question repeated?

16 (The pending question was read by the Reporter.)

17 THE WITNESS: Did he discuss an inside and outside union?
18 He discussed many things.

19 Q (By Mr. Feingold) Did he make any mention of the
20 Association?

21 A He did make a mention of our Association.

22 Q Did he say -- isn't it true he said, "You fellows
23 should stay with the Association"?

24 A He said that the Association went to him and demanded
25 certain improvements, and he agreed to them, and he could

1 not see why they are turning around after asking for
2 these hospitalizations why they are going to get another
3 union after they made this request.

4 Q Was this before the election?

5 A I couldn't say when it was, sir.

6 Q You have no recollection when this took place?

7 A I can review the meeting in my mind and what I said,
8 but I don't know the dates or the time or when.

9 Q You don't remember that at all?

10 A I don't. I really don't.

11 Q You don't know whether it was before the election or
12 after the election?

13 A I couldn't say, sir. I really don't.

14 Q What else did Mr. Lentz say at this meeting?

15 A Basically that's all I can remember.

16 Q Did he say anything about an outside union coming in?

17 A He did say----

18 Q What did he say about the outside union?

19 A He was referring when the Company Employee Association
20 went to him and requested certain terms, and they improved
21 them, and he agreed to their terms, and he honored them and
22 gave them everything they asked for; and he said in his
23 own words, "You asked for demands, and I gave you the
24 demands, and I assumed you were happy, and this is it."

25 Q And he asked them to stay with the Association?

1 A No, he didn't.

2 MR. SOMERS: Objection. Withdrawn.

3 Q (By Mr. Feingold) Can't you tell me whether this
4 was before the NLRB election or not?

5 A To be truthful, I don't.

6 Q I assume this is truthful in everything you say.

7 MR. SOMERS: I object to the remarks of counsel.

8 TRIAL EXAMINER: That's sufficient comment. Let's
9 get to the next question.

10 Q (By Mr. Feingold) Mr. Amoroso, you say you spent 85
11 per cent of your time outside of the office, is that correct?

12 A Yes, sir.

13 Q Now, isn't part of that time spent with the men?

14 A Yes, sir.

15 Q And how many days a week do you spend with the men
16 themselves?

17 A I cannot put it in terms of days of the week. I may
18 spend a day a month with a man directly with him.

19 Q What part of the week do you spend in visiting the
20 accounts of the other wine salesmen?

21 A It's hard to say. Whatever the problems are and
22 whose territory, I'll go and handle it.

23 Q Don't you have a regular routine when you go out with
24 the wine men?

25 A I don't set a pattern.

- 1 Q Do you spend a whole day when you go out?
- 2 A If I can, I will.
- 3 Q You visit his account?
- 4 A With him, yes.
- 5 Q Do you get any commission for visiting this account?
- 6 A No.
- 7 Q Incidentally, how are you compensated?
- 8 A I get paid a salary.
- 9 Q Do you get any extra compensation because the sales
10 have increased or is your salary reduced----
- 11 A No, sir.
- 12 Q You get a straight salary?
- 13 A Yes.
- 14 Q When you go on vacation how much vacation do you get?
- 15 A Two weeks.
- 16 Q When you go on vacation are you paid?
- 17 A I get my salary.
- 18 Q You get your salary. Do you get any bonuses?
- 19 A No, sir.
- 20 Q Never got a bonus from the company?
- 21 A Every Christmas.
- 22 Q How much is that bonus?
- 23 MR. SOMERS: Objection.
- 24 TRIAL EXAMINER: Sustained.
- 25 Q Now, you don't know whether Mr. Sandler also

1 investigated the Pellet matter, do you?

2 A All I know, I was instructed by Mervyn Lentz
3 and I did my job.

4 Q Do you know whether Mr. Sandler did or did not
5 investigate other accounts in connection with Pellet?

6 A No, because it was pertaining to wine that I was
7 sent.

8 Q Wasn't Pellet a wine salesman?

9 A Yes, sir.

10 Q Would you say that Mr. Sandler didn't do any
11 investigation?

12 TRIAL EXAMINER: Let's get on. I'm not interested
13 in his answer to that question.

14 Q (By Mr. Feingold) Now, in the salesroom, you sit at
15 a desk, didn't you?

16 A Yes, sir.

17 Q You have your own desk?

18 A Yes, sir.

19 Q That's separate and apart from where the salesmen
20 sit. They sit in rows, is that right?

21 MR. SOMERS: I----

22 THE WITNESS: Yes, sir.

23 MR. SOMERS: I object to the last question. I
24 think it's a double question in there.

25 TRIAL EXAMINER: Well, it might be easier if the witness

1 would just describe the physical layout of the Wine
2 Department in the salesroom. Is that satisfactory
3 with you?

4 MR. FEINGOLD: No. I think the winemen and the whiskey---

5 Q (By Mr. Feingold) Don't the winemen and the whiskey
6 men sit in the same room?

7 A Yes, the same room.

8 Q. Q And they have this kind of a table where two
9 sit at a table, is that right?

10 A Right.

11 Q And these tables are side by side, aren't they?

12 A We have two sides of tables like that going out,
13 and we have three on this side and four on this side, and
14 we have two desks that the whiskey men -- Bernie Sandler
15 sitting, and I was sitting next to him. (Indicating.)

16 Q And you sit away from the men?

17 A Yes, sir. It's all----

18 Q Do you have a telephone?

19 MR. SOMERS: Let him finish.

20 THE WITNESS: It's all one big room. I sit here and
21 the wine salesmen sitting next to me (indicating).

22 MR. SOMERS: The record doesn't reflect the movement.

23 THE WITNESS: I sit on the right at a desk, and the----

24 Q (By Mr. Feingold) Your desk is apart from where the
25 wine salesmen sit?

A They sit at tables.

1 Q Now,----

2 TRIAL EXAMINER: Mr. Feingold, do we have a description
3 of that table in the record?

4 MR. FEINGOLD: I think we have.

5 TRIAL EXAMINER: All right, go ahead.

6 Q (By Mr. Feingold) Don't you have a filing cabinet
7 where you keep records?

8 A No. I have a drawer in the desk.

9 Q And you keep files in there?

10 A Yes, sir.

11 Q And these files -- you have files on each wine salesman,
12 don't you?

13 A Yes, sir.

14 Q And you store up a fund of knowledge about each salesman,
15 don't you?

16 MR. SONERS: Objection.

17 Q (By Mr. Feingold) Don't you keep records on each
18 salesman?

19 TRIAL EXAMINER: Just a moment. What's your question?

20 MR. FEINGOLD: I withdraw the question.

21 Q (By Mr. Feingold) Now, you stated on direct examination
22 you have 80 accounts, but then there was some discussion
23 about that represents 43 A and P stores.

24 A I said I had 80 assigned to me.

25 Q And of the 80, 43 are A and P?

A Yes.

1 Q Do you visit each of these A and P stores?

2 A Not weekly. I go in and ask if I can help on the
3 displays and shelves, et cetera.

4 Q Isn't the selling done in one central -- the central
5 selling and buying?

6 A I did say I did not solicit orders.

7 Q Isn't it one account, A and P?

8 A A and P chain.

9 Q It's one account?

10 A One account with 43 stores.

11 Q It's one account, isn't it?

12 MR. SOMERS: Objection.

13 TRIAL EXAMINER: Let's not argue this.

14 Q (By Mr. Feingold) These accounts that are assigned
15 to you, Mr. Amoroso, aren't they house accounts?

16 MR. SOMERS: Objection.

17 TRIAL EXAMINER: Overruled.

18 THE WITNESS: I don't know what you call house accounts.

19 Q (By Mr. Feingold) You never heard the expression
20 of house accounts?

21 A I have heard the expression, but I don't know what
22 your interpretation is.

23 Q You tell me what your interpretation is. What is a
24 house account?

25 A A house account is when it is not assigned to a man but

1 assigned to somebody in the house.

2 Q Isn't it a fact that a house account is called an
3 account where no commission is paid to a salesman?

4 A I don't know the commission setup on it.

5 Q You don't know what the commission setup is on a house
6 account?

7 A No, sir.

8 Q Do you get any commission on those sales?

9 A No, sir.

10 Q Do you know whether anyone gets a commission on the
11 sales?

12 A The house accounts or the accounts I call on?

13 Q On the accounts you call on.

14 A The accounts I call on certain salesmen get commissions
15 on them.

16 Q They do?

17 A Yes.

18 Q A full commission?

19 A Yes, sir.

20 Q The accounts assigned to you?

21 A Yes, sir.

22 Q You tell me the names of those accounts.

23 MR. SOMERS: Objection.

24 TRIAL EXAMINER: Just a moment. I'm not going to
25 get into that. If I understand your testimony, there are

1 certain accounts assigned to you on which you do not get
2 commissions, but someone else does?

3 THE WITNESS: I do not get commission on anything I
4 sell, sir. I get a salary. I do call on accounts that
5 are assigned to me that whiskey men call on too.

6 TRIAL EXAMINER: And the whiskey men get a commission
7 on the wine sold there?

8 THE WITNESS: Yes.

9 TRIAL EXAMINER: This is not inconsistent with anythinng
10 I have heard in this hearing.

11 MR. FEINGOLD: I want to clear it up. I think I am
12 entitled to clear it up.

13 TRIAL EXAMINER: If you think there is something
14 unclear, I'll hear you.

15 MR. FEINGOLD: Yes.

16 Q (By Mr. Feingold) Isn't it a fact that in all wine
17 sales a whiskey salesman gets a commission on a wine sale
18 made to his customer?

19 A Yes, he does.

20 Q Isn't that what you're talking about?

21 A Yes, sir.

22 Q So whether Mr. Sameloff or Mr. Cohen made a sale
23 to an account, a whiskey salesman would get an override
24 on the wine sale, isn't that right?

25 A Yes, sir.

1 Q Is that true of all wine sales?

2 A Yes, but when you're referring to wine sales to me,
3 you're referring to a different thing. I sell a lot of
4 imported wine for these men, and they get the straight
5 big commission.

6 Q The liquor salesmen get that commission?

7 A Yes, sir.

8 Q But I am talking about the wine salesmen, Mr. Amoroso.

9 A When the wine salesman gets an account, the liquor
10 salesman gets an override.

11 Q But apart from that override, when you make a sale of
12 wine, no wine salesman gets a commission on that, isn't
13 that correct?

14 A No, sir. They don't get commission. They are on
15 salary.

16 Q Straight salary?

17 A They have a guaranteed draw.

18 Q Don't they have a drawing against commissions?

19 A But they are not getting a commission.

20 TRIAL EXAMINER: Just a moment. Somewhere along the
21 line I have to make sense out of this. Mr. Amoroso, correct
22 me if I am wrong. You draw a straight salary no matter how
23 much wine you sell or don't sell?

24 THE WITNESS: Yes, sir.

25 TRIAL EXAMINER: Let's take any wine salesman working

1 in your wine department -- Mr. "X".

2 THE WITNESS: Correct.

3 TRIAL EXAMINER: Am I to understand that he has a
4 certain figure or salary figure which is his draw?

5 THE WITNESS: Correct.

6 TRIAL EXAMINER: He gets that also no matter how much
7 wine he sells?

8 THE WITNESS: Correct.

9 TRIAL EXAMINER: Is there any occasion in which his
10 compensation will be increased if he sells more wine?

11 THE WITNESS: Yes.

12 TRIAL EXAMINER: Tell me how that happens.

13 THE WITNESS: Mr. Cohen had hit over his guaranteed
14 draw. I think it was on two occasions, and he got a commission
15 for it.

16 TRIAL EXAMINER: All right. I understand that setup.
17 Continue, Mr. Feingold.

18 Q (By Mr. Feingold) Isn't that known as getting a draw
19 against commissions?

20 TRIAL EXAMINER: Let's not get into that. I understand
21 what the witness told me. Let's get on.

22 Q (By Mr. Feingold) Now, do you come into the office
23 on Saturdays?

24 A Occasionally I have.

25 Q Do you discuss policy with Mr. Mervyn Lentz or Stanley
 Goldstein?

1 A We have discussed sales and stuff.

2 Q Do you discuss the salesmen?

3 A No, sir, unless they want me to assign them to something
4 to do next week. We'll discuss a salesman.

5 Q Do you discuss selling policy with them?

6 A They set the policy.

7 Q I'm asking you whether you discuss selling policy
8 with them.

9 A No, sir.

10 Q What do you discuss with them on Saturday mornings?

11 A Well, occasionally -- I've only been in a few Saturdays.
12 Occasionally because something happened on a Friday and
13 Mervyn will call me up and say "Something was wrong with this
14 account. Find out from Sameloff on Monday or over the weekend
15 and straighten the account. On Italian Swiss if we have
16 a shortage of glass, I have to go in with him and take
17 inventory, and he would order the merchandise so we would
18 have enough merchandise to supply our retailer.

19 Q What else do you discuss or did you discuss on
20 Saturday mornings when you come in?

21 A I don't know what else. We can discuss a ballgame
22 sometimes or a theater show or going out for dinner.

23 Q I'm talking with reference to the business, Mr.
24 Amoroso.

25 A I'm saying, we discuss sales problems -- anything
pertaining to the wine or the wine salesmen we discuss.

1 Q Do you discuss quotas?

2 A If it happens to be a quota received on a Friday
3 and he hasn't had an opportunity to review it with me,
4 yes, we will discuss quotas.

5 Q Now, when you discuss quotas, do you make recommendations
6 to Mr. Lentz?

7 A If I happen to think a quotas is too high and not
8 feasible, I'll recommend we don't accept the quota.

9 Q And are your recommendations followed?

10 A It's reviewed by him. If he thinks I'm right, He'll
11 stick by his guns.

12 Q He'll stick by your guns?

13 A No. My guns, yes. My request.

14 Q Now, you spoke of interviewing Mr. Sameloff when he
15 came around for a job, is that correct?

16 A Yes, sir.

17 Q At that time did you discuss with him whether he ever
18 belonged to a union?

19 A No, sir.

20 Q You didn't. And after you interviewed him, you made
21 a recommendation as to what you thought of this man?

22 A I was sent----

23 Q Did you make a recommendation?

24 A Yes.

25 Q And to whom did you make the recommendation?

1 A Mr. Mervin Lentz.

2 Q What was that recommendation?

3 A That I thought the man was a wine man and a good man.

4 Q Was he hired later that day?

5 A Yes, he was hired that day.

6 MR. FEINGOLD: I have no further questions.

7 TRIAL EXAMINER: Mr. Somers?

8 REDIRECT EXAMINATION

9 Q (By Mr. Somers) Mr. Amoroso, after you told Mr. Lentz
10 what your opinion of Mr. Sameloff was, do you know what
11 happened to Mr. Sameloff?

12 A Yes. Mr. Sameloff went into Mr. Goldstein's office,
13 and from Mr. Goldstein's office he went into Mr. Mervyn
14 Lentz' office, and Mr. Lentz came out and told me "I hired
15 him."

16 Q Were you present during the discussion Mr. Lentz had
17 with Mr. Sameloff?

18 A No, sir.

19 Q Do you recall how long it lasted if you can remember?

20 A I don't know. He was in there for a while, and Mr.
21 Lentz came out and said "I hired him," and to show him
22 around and get him ready.

23 Q Do you know how your salary compares with other liquor
24 salesmen?

25 MR. FEINGOLD: I object to it.

1 Q (By Mr. Somers) Without specific figures.

2 MR. FEINGOLD: Not raised anywhere.

3 MR. MARROW: May I object? What's the relationship
4 to this man and liquor salesmen? I understood his question
5 to be how does the salary compare with the liquor salesmen.

6 TRIAL EXAMINER: That escaped me. If that was the
7 question, I'll sustain the objection.

8 MR. SOMERS: May I know on what ground?

9 TRIAL EXAMINER: That won't help me much to compare
10 Mr. Amoroso's salary with that of liquor salesmen.

11 MR. SOMERS: I don't think that is the question. There
12 is evidence here that this man does work on occasion with
13 the liquor salesmen.

14 TRIAL EXAMINER: Well, there is no contention, as
15 I understand it, that he exercises supervision over liquor
16 salesmen. There may be some slight connection there. I
17 don't know that he even knows the answer to the question.
18 All right, I'll reverse that. Do you know whether your
19 salary is the same or greater than the compensation received
20 by liquor salesmen or less than?

21 THE WITNESS: I know my salary in comparison to some
22 of the liquor salesmen is lower.

23 MR. FEINGOLD: I'm going to object to this and move
24 to strike it out.

25 TRIAL EXAMINER: No. I won't do that. I assume by that

1 you mean that your salary is greater than some.

2 THE WITNESS: I'm talking about only the men I know
3 their salaries. Not every man would discuss his salary
4 with me. Some of the men have, and I know my salary is
5 lower than their's.

6 MR. FEINGOLD: This testimony has no value.

7 TRIAL EXAMINER: This is based on conversations with
8 those salesmen only?

9 THE WITNESS: Yes, sir.

10 TRIAL EXAMINER: Go ahead, Mr. Somers. The motion to
11 strike is denied.

12 MR. FEINGOLD: Again, I state if we are going to talk
13 arithmetic and figures, I think the exclusion of this evidence
14 makes this kind of evidence of little probative value.

15 TRIAL EXAMINER: Go ahead.

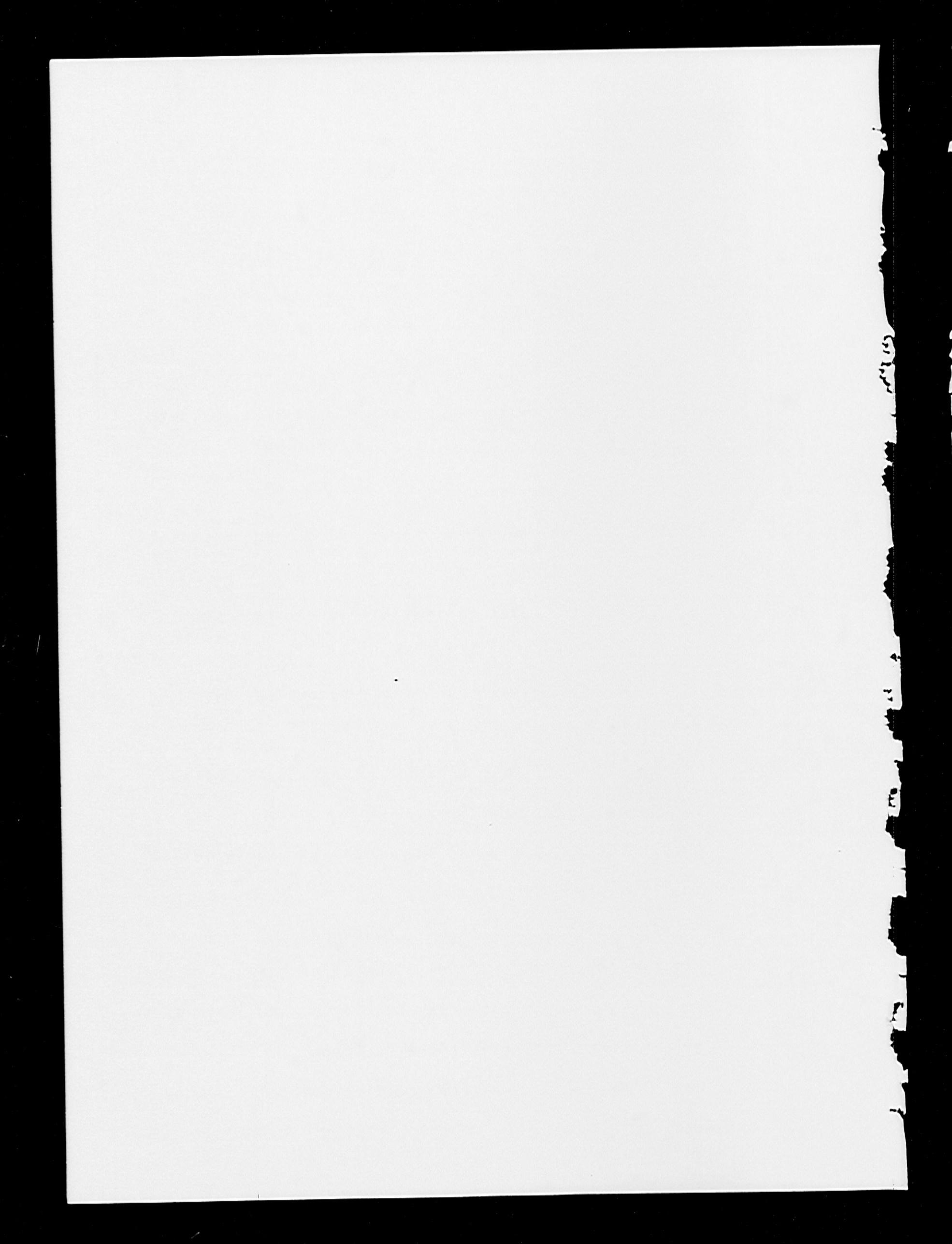
16 Q (By Mr. Somers) Mr. Amroso, is there any commission
17 paid on wine tastings?

18 MR. FEINGOLD: I'm going to object. I didn't go into
19 wine tastings at all.

20 MR. SOMERS: I think this is relevant.

21 TRIAL EXAMINER: There are a number of things that were
22 brought up. Wine tastings were brought up, and commissions
23 were brought up. I'll permit the question.

24 Q (By Mr. Somers) Are there commissions paid on wine
25 tastings?



1 A What do you mean by commissions? Do we receive any
2 added benefits for wine tastings?

3 Q Yes.

4 A No. This is part of our job.

5 Q Approximately of all of the wine tastings conducted
6 over a period of say six months, what----

7 MR. FEINGOLD: I'm going to object to this. It's
8 clearly improper at this stage of the inquiry, redirect or
9 sur-rebuttal.

10 TRIAL EXAMINER: I didn't get the question. Restate
11 the question.

12 Q (By Mr. Somers) What percentage of all the wine tastings
13 that are handled by Brescome do you handle?

14 MR. FEINGOLD: Objection.

15 TRIAL EXAMINER: Mr. Somers, wasn't this covered by
16 Mr. Lentz in his testimony?

17 MR. SOMERS: Yes, it was.

18 TRIAL EXAMINER: All right, I'll sustain the objection.

19 MR. SOMERS: I have nothing further.

20 MR. MARROW: No questions.

21 TRIAL EXAMINER: Mr. Feingold?

22 MR. FEINGOLD: No questions.

23 TRIAL EXAMINER: Mr. Amoroso, you're excused. Thank you.
24 (Witness excused.)

25 TRIAL EXAMINER: Mr. Somers?